CITIZENS CLEAN ELECTION COMMISSION
Title 2, Chapter 20

Amend: R2-20-211, R2-20-220, R2-20-223

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 7, 2023; April 4, 2023

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

FROM: Council Staff

DATE: March 31, 2023

SUBJECT: **CITIZENS CLEAN ELECTION COMMISSION**
Title 2, Chapter 20

Amend: R2-20-211, R2-20-220, R2-20-223

Note: This Council staff memorandum supersedes the previous memorandum dated March 15, 2023 and all legal analysis therein.

Staff Update:

The Citizens Clean Election Commission ("Commission") submitted a rulemaking package to the Council seeking to amend three rules in Title 2, Chapter 20, Article 2. Specifically, the Commission sought to amend rules R2-20-211 to allow the Executive Director of the Commission to delegate authority to issue subpoenas and take depositions to "any person authorized to provide legal services." Similarly, the Commission sought to amend R2-20-223 to allow "any person authorized to provide legal services on behalf of the Commission" to draft and serve notice of an appealable agency action rather than only the Assistant Attorney General.

This rulemaking was considered at the Governor's Regulatory Review Council ("Council") Study Session on February 28, 2023 and Council Meeting on March 7, 2023. At the March 7, 2023 Council Meeting, Council Member Bentley questioned whether the Commission had authority to delegate its subpoena power. Specifically, Council Member Bentley cited *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942) as prohibiting agency delegation of

subpoena power unless expressly authorized. Council Member Bentley requested Council staff provide additional information clarifying the concerns raised. Ultimately, the Council voted to table consideration of this rulemaking to the March 28, 2023 Study Session and April 4, 2023 Council Meeting.

At the March 28, 2023 Study Session there was also discussion regarding whether the Commission's rulemaking was properly before the Council given the language in A.R.S. § 16-974(D) which states "[t]he [C]ommission's rules and any commission enforcement actions pursuant to this chapter are not subject to the approval of or any prohibition or limit imposed by any other executive or legislative governmental body or official. Notwithstanding any law to the contrary, rules adopted pursuant to this chapter are exempt from title 41, chapters 6 and 6.1."

Council staff previously prepared a memorandum addressing some of the Council's concerns dated March 15, 2023. Given Council staff's updated understanding regarding the structure of A.R.S. Title 16 and the additional concerns raised by the Council at the March 28, 2023 Study Session, Council staff has revised the March 15, 2023 memorandum to include additional analysis in Section III(1) and modified analysis in Sections III(2) and (3), including additional case analysis of *NLRB v. John S. Barnes Corp.* in Section III(3)(c).

I. QUESTIONS PRESENTED

1. Is the Commission's rulemaking exempt from Council review and the requirements of the Administrative Procedures Act (APA) pursuant to A.R.S. § 16-974(D)?

2. Does statute grant the Commission express authority to delegate issuing subpoenas, taking depositions, and drafting and serving notices of an appealable agency action?

3. Does *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942) prohibit delegation of subpoena power by an agency when delegation authority was not expressly granted by statute?

4. Is the term "legal services," included in the proposed amended language in Commission rules R2-20-211 and R2-20-223, defined in either the Commission's rules or statutes?

III. ANALYSIS

1. Is the Commission's rulemaking exempt from Council review and the requirements of the Administrative Procedures Act (APA) pursuant to A.R.S. § 16-974(D)?

Short Answer:

No. While A.R.S. § 16-974(D) exempts Commission rulemakings to implement, and arising out of statutory authority from, A.R.S. Title 16, Chapter 6.1 from Council review and the requirements of the APA generally, the current rulemaking is being brought pursuant to statutes in A.R.S. Title 16, Chapter 6, Article 2, which does not have a similar exemption.

Full Analysis:

The exemption from Council review outlined in A.R.S. § 16-974(D) is applicable only to "rules and any commission enforcement actions *pursuant to this chapter*…." (emphasis added). The chapter referenced is A.R.S. Title 16, Chapter 6.1, which was recently added by the Voters' Right to Know Act (*see* 2022 AZ Init. Meas. 4, § 3, approved as Proposition 211, effective December 5, 2022), under which A.R.S. § 16-974 is codified.

However, the Commission indicated at the March 28, 2023 Study Session that the current rulemaking is being brought pursuant to the Citizens Clean Elections Act, the statutes of which are found in A.R.S. Title 16, Chapter 6, Article 2. A.R.S. Title 16, Chapter 6, Article 2 currently has no similar statutory exemption from Council review of the Commission's rulemakings as found in Chapter 6.1. In fact, while such an exemption did exist at one time in A.R.S. § 16-956(C), that exemption was removed pursuant to Proposition 306, which was approved by Arizona voters in November 2018. Since that time, the Commission has submitted several rulemakings implementing, and arising out of the statutory authority from, A.R.S. Title 16, Chapter 6, Article 2 to the Council for its review and approval. Similarly, the current rulemaking is properly before the Council.

2. Does statute grant the Commission express authority to delegate issuing subpoenas, taking depositions, and drafting and serving notices of an appealable agency action?

Short Answer:

No. No statute in A.R.S. Title 16, Chapter 6 expressly authorizes the Commission to delegate its duties.

Full Analysis:

The Commission cites to A.R.S. § 16-956(A)(7) as part of its statutory authority for these rules which states, "[t]he *[C]ommission* shall [e]nforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund." (emphasis added). A.R.S. § 16-956(B) also states, "[t]he *[C]ommission* may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers." (emphasis added). No other statute in A.R.S. Title 16, Chapter 6, Article 2 authorizes the Commission to delegate these duties.

While A.R.S. § 16-979(C) states "[n]otwithstanding any law, the [C]ommission has exclusive and independent authority to select legal counsel to represent the [C]ommission regarding its duties *under this chapter*…", A.R.S. § 16-979(C) is codified under A.R.S. Title 16,

Chapter 6.1. (emphasis added).[1] As such, any authority to delegate the Commission's duties to legal counsel is limited to those duties outlined by statute in A.R.S. Title 16, Chapter 6.1. As outlined above, the Commission indicates the current rulemaking is being brought pursuant to statutes in A.R.S. Title 16, Chapter 6, not Chapter 6.1. Therefore, the Commission has not cited to, and there does not appear to be any, express statutory authority to delegate the Commission's duties outlined in Title 16, Chapter 6, Article 2.

3. Does *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942) prohibit delegation of subpoena power by the Commission?

Short Answer:

No. Given that the *Cudahy* decision involved construction of the Fair Labor Standards Act, a different statute from the Citizens Clean Elections Act at issue here, and the *Cudahy* Court's emphasis on the fact that the legislative history of the Fair Labor Standards Act showed a provision granting the authority to delegate subpoena power was eliminated when the bill was in Congress, though no similar history exists surrounding Proposition 200 which established the Citizens Clean Election Act by ballot initiative in 1998, *Cudahy* is distinguishable from the current circumstances and is not controlling. Furthermore, subsequent case law, discussed in more detail below, supports delegation of the Commission's subpoena power, even in the absence of express statutory authority to delegate.

Full Analysis:

a. *Cudahy Packing Co. v. Holland*

In *Cudahy*, a regional director of the Wage and Hour Division of the Department of Labor issued a subpoena to Cudahy Packing Co. ("Petitioner"), demanding the production of books, papers, and records relating to wages and hours and purchases and shipments. *Cudahy*, 315 U.S. at 358-59. On appeal to the Supreme Court, the question was raised as to whether, under the Fair Labor Standards Act, 52 Stat. 1060, 29 U.S.C. § 201, *et seq*. ("Act"), the Administrator of the Wage and Hour Division of the Department of Labor has authority to delegate his statutory power to sign and issue a subpoena duces tecum to a regional director. *Id.* at 358.

Section 11 of the Act authorized the Administrator and his designated representatives to conduct investigations which he may deem necessary to determine whether any person has violated any provision of the Act, or which may aid in the enforcement of the provisions of the Act. The Act did not define the Administrator's power to issue subpoenas or specifically authorize him to delegate it to others.

[1] Council staff notes that prior to March 28, 2023, the Arizona Revised Statutes (A.R.S.) found at azleg.gov did not include the Chapter 6.1 heading in Title 16. As such, A.R.S. §§ 16-971 through 979 were erroneously codified under A.R.S. Title 16, Chapter 6, Article 2.

However, for the purposes of any hearing or investigation, § 9 of the Act made applicable to the powers and duties of the Administrator, the subpoena provisions of a separate act, §§ 9 and 10 of the Federal Trade Commission Act. 15 U.S.C.S. §§ 49 and 50. The Administrator was thus given all the powers with respect to subpoenas which are conferred upon the Federal Trade Commission, and no more. Specifically, under § 9 of the Federal Trade Commission Act, 15 U.S.C.S. § 49, the Commission may require the attendance and testimony of witnesses, and production of documents by subpoena; and any members of the Commission may *sign* the subpoenas.

Given this statutory structure, the Administrator argued that he was given authority to delegate to to regional directors the signing and issuance of subpoenas by § 4(c) of the present Act, and that, in any case, this authority is to be implied from the structure of the Act and the nature of the duties which are imposed upon him. *Id.* at 360. Section 4(c) provided: "The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place."

The Court held that the words of § 4(c), read in their statutory setting, make it reasonably plain that its only function is to provide that the Administrator and his representatives may exercise either within or without the District of Columbia such powers as each possesses. *Id.* at 361-62. The Court stated that, under the language in the Act, the power of the Administrator to delegate his power to sign and issue subpoenas could not be inferred, either from the extensive nature of the Administrator's duties, or from the fact that, under Section 11 of the Act, he is empowered, through designated representatives, to gather data and make investigations authorized by the Act. *Id.* at 363-64. The Court held that subpoena power shall be delegable only when an authority to delegate is expressly granted. *Id.* at 366. Furthermore, the Court noted that the legislative history of the Act showed that the authority to delegate the subpoena power was eliminated by the Conference Committee from the bills which each House had adopted. *Id.* Such authority expressly granted in the bill which passed the Senate, was rejected by the Conference Committee. *Id.*

The *Cudahy* case involved construction of an entirely different statutory framework from the Citizens Clean Election Act. Here, unlike in *Cudahy*, the plain language of A.R.S. § 16-956(B) defines the Commission's power to issue subpoenas, though the statutes in A.R.S. Title 16, Chapter 6, Article 2 are silent as to the Commission's authority to delegate it to others. Additionally, unlike in *Cudahy*, there is no evidence in the history of the Citizens Clean Elections Act, established by ballot initiative in 1998, showing that a provision granting authority to delegate the subpoena power was eliminated or restricted. Therefore, the facts at issue in *Cudahy* are different from those surrounding the Commission's rules and its holding does not apply.

b. *Fleming v. Mohawk Wrecking & Lumber Co*

While *Cudahy* was cited at the March 7, 2023 Council Meeting, the authority of agencies to delegate subpoena power, specifically the Court's holding in *Cudahy*, was considered in a subsequent Supreme Court case, *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111

(1947), decided five years later. In *Fleming*, the Court found that the Price Administrator of the Office of Price Administration *could* delegate to district directors authority to sign and issue subpoenas. *Id.* at 122.

Fleming dealt with Section 201(a) of the Emergency Price Control Act which provided, in part, "[t]he Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended." Furthermore, Section 201(b) of the Emergency Price Control Act provided, "[t]he principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place."

While these provisions were practically identical to those considered in *Cudahy*, the Court in *Fleming* determined the decision in *Cudahy* did not control. *Id.* at 120 Specifically, the Court in *Fleming* found that the legislative history of the Act involved in the *Cudahy* case showed that a provision granting authority to delegate the subpoena power had been eliminated when the bill was in Conference. *Id.* On the other hand, the Court noted the Senate Committee in reporting the bill that became the Emergency Price Control Act described § 201(a) as authorizing the Administrator to "perform his duties through such employees or agencies by delegating to them any of the powers given to him by the bill." *Id.* Furthermore, the Court noted that § 201(b) authorized him or "any representative or other agency to whom he may delegate any or all of his powers, to exercise such powers in any place." *Id.* at 120-21 (*citing* S. Rep. No. 931, 77th Cong., 2d Sess., pp. 20-21.). The Court in *Fleming* also noted in *Cudahy*, the Act made expressly delegable the power to gather data and make investigations, thus lending support to the view that when Congress desired to give authority to delegate, it said so explicitly. *Id.* at 121. In the Emergency Price Control Act, the Court noted there was no provision which specifically authorizes delegation as to a particular function. *Id.* In *Cudahy*, the Act made applicable to the powers and duties of the Administrator the subpoena provisions of the Federal Trade Commission Act, §§ 9 and 10, 38 Stat. 722, 723, 15 U. S. C. §§ 49 and 50, which only authorized either the Commission or its individual members to sign subpoenas. *Id.* The Court in *Fleming* noted the subpoena power under the Emergency Price Control Act was found in § 202(b) which states, "[t]he Administrator may administer oaths and affirmations and may, whenever necessary, by subpoena require any such person to appear and testify or to appear and produce documents, or both, at any designated place" and was not dependent on the provisions of another Act having a history of its own. *Id.*

Furthermore, the Court noted the Act involved in *Cudahy* granted no broad rulemaking power. *Id.* However Section 201(d) of the present Act provided, "[t]he Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act." The Court stated, such a rulemaking power may itself be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld. *Id.* (citing *Plapao Laboratories v. Farley*, 92 F.2d 228 (D.C. Cir. 1937)). The Court found there was no provision in the Emergency Price Control Act negating the existence of such authority, so far as the subpoena power is concerned, nor can the absence of such authority be fairly inferred from the history and

content of the Act. *Id.* at 121-22. Thus, the Court held that the presence of the rulemaking power, together with the other factors differentiating this case from *Cudahy*, indicates that the authority granted by § 201(a) and (b) should not be read restrictively. *Id.* at 122.

c. *NLRB v. John S. Barnes Corp.*

In another case decided by the Seventh Circuit Court of Appeals two years later, *NLRB v. John S. Barnes Corp*, 178 F.2d 156 (7th Cir. 1949), the Court also held that a Regional Director of the National Labor Relations Board (Board) could issue subpoenas. *Id*. at 162. The Regional Director of the Thirteenth Region of the Board issued subpoenas to John S. Barnes Corporation and Ernest J. Svenson (Respondents), one of its officers, to appear and testify and to produce certain documents and data before a hearing officer of the Board at a designated time and place. *Id.* at 157. The respondents contended that since the National Labor Relations Act, as amended, gave no express delegation authority to the Regional Directors of the Board to issue subpoenas, the subpoenas were invalid. *Id.* at 158.

Section 11(1) of the Labor-Management Relations Act of 1947 provided that, "the Board, or any member thereof, shall upon application of any party to such proceedings, forthwith 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." *Id.* Section 11(1) also provided additional powers which the Board was expressly authorized to delegate to "any agent or agency designated by the Board for such purposes", including administering oaths and affirmations. *Id.* Respondents contended that the express authorizations to delegate certain powers and the failure to expressly authorize the delegation of the subpoena power indicated that Congress did not intend that the Board should have the right to delegate the subpoena power to any agent. *Id.* at 158-59. However, the Court in *Barnes* found that, the mere fact that certain sections of the Labor-Management Relations Act of 1947 authorized the delegation of certain powers by the Board, had not been generally construed as depriving the Board of the power to delegate certain other powers, the delegation of which was not expressly authorized, citing several examples. *Id.* at 159.

The Court in *Barnes* also noted Section 6 of the Act gives the Board power to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the Act. *Id.* at 159. The Court in *Barnes* noted that the Board adopted Rule 203.58(c) National Labor Relations Board Rules and Regulations, Series 5, 12 Fed.Reg. 5656, which provided that subpoenas should be issued by the regional director or a hearing officer. *Id.* The Court in *Barnes* found that the rule was "necessary to carry out the provisions of the Act." *Id.* The Court also noted that while it agreed that the Board could not, by its own rule, enlarge its powers beyond the scope intended by Congress, "[s]uch rule-making power may itself be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld." *Id.* (quoting *Fleming*, 331 U.S. at 121).

Furthermore, the Court in *Barnes* noted that, given the broad purpose and policy of the Act, the administration of the Act must be flexible and construed as to make its various provisions workable. *Id*. at 160. Ultimately, the Court found, from its consideration of the

National Labor Relations Act as a whole, its various provisions, its purpose, its legislative history, and the magnitude of the program involve, it was convinced that Congress intended to grant the Board the authority to delegate the power to issue subpoenas even though the power was not expressly granted. *Id.* at 162. The Court held that the subpoenas issued by the Regional Director pursuant to the Rules and established practice of the Board, were valid. *Id.*

d. *NLRB v. Lewis*

In another case regarding the same provision of the National Labor Relations Act, decided by the Ninth Circuit Court of Appeals, *NLRB v. Lewis*, 249 F.2d 832 (9th Cir. 1957), the Court again held that a Regional Director of the National Labor Relations Board (Board) could issue subpoenas under the facsimile signature of a Board member. *Id.* at 835. The General Counsel, by the Regional Director in Los Angeles, California, filed a consolidated complaint against the Lewis Food Company and the Association of Independent Workers of America, alleging that the company and the union were engaging in various unfair labor practices in violation of the Labor-Management Relations Act of 1947. *Id.* at 833. Pursuant to the written request of counsel for the General Counsel, the Regional Director, acting under Section 11(1) of the Act, 29 U.S.C.A. 161(1); issued the subpoenas in question under the seal of the Board and the facsimile signature of Abe Murdock, a member of the Board. *Id.*

The Court in *Lewis* noted, just as the Court in *Barnes*, that, while Section 11(1) explicitly empowers only the Board, or a member thereof, to issue subpoenas, nowhere in the Labor-Management Relations Act of 1947 does it make that power delegable nor expressly prohibit delegation. *Id.* at 835. Furthermore, the Court in *Lewis* noted all courts that had considered the delegability of the Board's subpoena issuing power to a Regional Director had interpreted Section 11(1) of the Labor-Management Relations Act of 1947 as empowering the Board to delegate the subpoena power. *Id.* (*citing National Labor Relations Board v. John S. Barnes Corp.*, 190 F.2d 127 (7th Cir. 1951) and *Jackson Packing Co. v. National Labor Relations Board*, 204 F.2d 842 (5th Cir. 1953)). As such, the Court held that subpoenas may validly be issued by a Regional Director under the facsimile signature of a Board member. *Id.*

Interestingly, the Court in *Lewis* also stated that neither *Cudahy* nor *Fleming* were controlling. *Id.* The Court noted the *Cudahy* decision merely held that the Fair Labor Standards Act, 29 U.S.C.A. 201 *et seq*. did not grant the Administrator the power to delegate his subpoena power to subordinates, while on the other hand, the *Fleming* case held that the Administrator of the Emergency Price Control Act, 50 U.S.C.A. Appendix, 901 *et seq*. was authorized to delegate the authority to issue subpoenas. *Id.* The Court found each of those cases involved the construction of a statute different from Section 11(1) of the Labor-Management Relations Act of 1947 at issue in *Lewis*. *Id.* Accordingly, the Court held those decisions, one upholding the delegability of this power and the other denying it, did not govern the instant case. *Id.* Therefore, the Court held that subpoenas could be issued by a Regional Director under the facsimile signature of a Board member.

Finally, the Court in *Lewis* addressed the fact that counsel for the General Counsel, not the General Counsel himself, sought the subpoenas. *Id.* at 838. To that point, the Court stated,

"[n]o citation of cases is necessary to restate the rule that in legal contemplation counsel representing counsel occupies the identical legal status of the person he represents." *Id.* As such, the Court found, if the General Counsel could apply for the issuance of subpoenas, as the Court had held, counsel representing him could also do so validly. *Id.*

e. *Applicability of case law to Commission's authority to delegate subpoena power.*

In the current circumstance, as noted in *Lewis*, the applicability of the holdings in *Cudahy*, *Fleming*, *Barnes*, and even *Lewis* itself are limited as they involved construction of different statutes from those at issue here. For that reason alone, *Cudahy* is not controlling as related to whether the Commission's subpoena power is delegable under its statutes. However, in the absence of a Court's interpretation of the present statutory provisions, we can look to the above cases for guidance. In that regard, the circumstances here are more similar to those found in *Fleming*, *Barnes*, and *Lewis* than *Cudahy*.

Here, while there is no express statutory authority to delegate the Commission's subpoena power, like in *Barnes* and *Lewis*, there is no statutory prohibition either. Furthermore, unlike in *Cudahy*, there is no evidence in the history of the Citizens Clean Elections Act that the ability to delegate the Commission's subpoena power was eliminated or restricted. Ultimately, as in *Fleming*, there is no provision restricting delegating authority, so far as the subpoena power is concerned, "[n]or can the absence of such authority be fairly inferred from the history and content" of the Citizens Clean Elections Act.

Additionally, like Section 201(d) of the Emergency Price Control Act in *Fleming*, which granted the Administrator the authority to "issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act," or Section 6 of the Labor-Management Relations Act of 1947 in *Barnes* and *Lewis*, which granted the Board power to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the Act, the Commission "may adopt rules to carry out the purposes of this article and to govern procedures of the [C]ommission", pursuant to A.R.S. § 16-956(C). As outlined in *Fleming* and reiterated in *Barnes*, such a grant of power "may itself be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld." *Fleming*, 331 U.S. at 121. Therefore, just like the NLRB adopted Rule 203.58(c) outlined in *Barnes*, which provided that subpoenas should be issued by the regional director or a hearing officer, and that the *Barnes* Court indicated was "necessary to carry out the provisions of the Act," here the Commission's proposed amendments to allow delegation of subpoena power to any person authorized to provide legal services may also "carry out the purposes of" A.R.S. Title 16, Chapter 6, Article 2 and "govern procedures of the Commission."

Ultimately, given the presence of the rulemaking power in A.R.S. § 16-956(C), together with the other factors differentiating the present circumstances from *Cudahy* and making them similar to *Fleming*, *Barnes*, and *Lewis*, as well as a consideration of the purpose and intent of the Citizens Clean Elections Act as a whole as outlined in A.R.S. § 16-940 and the Commission's role to enforce and administer the system, Council staff believes the Commission has authority to

delegate its subpoena power to persons authorized to provide legal services, and subdelegate to any person authorized to provide legal services to the delegee as discussed in *Lewis*.

4. Is the term "legal services," included in the proposed amended language in Commission rules R2-20-211 and R2-20-223, defined in the Commission's rules or statutes?

Short Answer:

No. The term "legal services" is not defined in either the Commission's rules or statutes.

Full Analysis:

The proposed amendments to rule R2-20-211(A) and (B) state the Executive Director of the Commission may delegate the authority to issue subpoenas and take depositions "to any person authorized to provide legal services." Likewise, the proposed amendments to rule R2-20-223 states "any person authorized to provide legal services on behalf of the Commission" shall draft and serve notice of appealable agency action.

The term "legal services" is not defined in the Commission's rules or statutes. However, the Rules of the Supreme Court of Arizona defines "practice of law" to mean, "*providing legal advice or services* to or for another by: (1) preparing or expressing legal opinions to or for another person or entity; (2) representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation; (3) preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal; (4) negotiating legal rights or responsibilities on behalf of a specific person or entity; or (5) preparing a document, in any medium, intended to affect or secure a specific person's or entity's legal rights." *See* A.R.S. Sup.Ct.Rules 75(b) (emphasis added).

Additionally, the Rules of the Supreme Court of Arizona and Rules of Professional Conduct state, "[a] lawyer in a firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyers engaged in activities assisting lawyers in providing legal services…is compatible with the professional obligations of the lawyer." *See* A.R.S. Sup.Ct.Rules, Rule 42(a); Rules of Prof.Conduct, ER 5.3(a). Specifically, lawyers shall "ensure that nonlawyers assisting in the delivery of legal services or working under the supervision of a lawyer comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all lawyer client information protected by ER 1.6." *Id.*

As such, it appears the scope of the term "legal services" would include lawyers issuing subpoenas, taking depositions, or drafting and serving appealable agency actions. However, the Rules of the Supreme Court of Arizona and Rules of Professional Conduct also contemplate nonlawyers "assisting lawyers in providing legal services."

Council staff believes the rules are sufficiently clear, concise, and understandable as written pursuant to A.R.S. § 41-1052(D)(4) as related to the term "legal services" as it is generally understood in the legal profession.

IV. CONCLUSION

The Commission's rulemaking is properly before the Council as there is no statutory exemption from Council review located in A.R.S. Title 16, Chapter 6, Article 2, out of which this rulemaking arises.

While there is no express statutory authority for the Commission to delegate its duties, including the issuance of subpoenas, the Court's holding in *Cudahy* is not controlling and does not prohibit the Commission's delegation of subpoena power. In fact, subsequent case law from the Supreme Court, Seventh Circuit, and Ninth Circuit have all held that agencies may delegate subpoena power in the absence of express authority to do so, particularly when the agency is given a broad grant of rulemaking authority and no evidence of restriction exists either in express provisions or history. As such, given the Commission's broad grant of rulemaking power in A.R.S. § 16-956(C), together with the other factors differentiating the present circumstances from *Cudahy* and making them similar to *Fleming*, *Barnes*, and *Lewis*, Council staff believes the Commission has authority to delegate its subpoena power to persons authorized to provide legal services, and subdelegate to any person authorized to provide legal services to the delegee as discussed in *Lewis*.

Finally, while the term "legal services" is not defined in the Commission's rules or statutes, Council staff believes the rules are sufficiently clear, concise, and understandable as written pursuant to A.R.S. § 41-1052(D)(4) as related to the term "legal services" as it is generally understood in the legal profession.

Memorandum

To: Governor's Regulatory Review Council

From: Kara Karlson & Kyle Cummings, Assistant Attorneys General

RE: Clean Elections Commission Rule Amendments to A.A.C. R2-20-211, R2-20-220, and R2-20-223.

Date: March 31, 2023

Introduction

At the Council's Study Session on March 28, Chair Nicole Sornsin requested the Citizens Clean Elections Commission ("Commission") provide a brief on the amendments to rules Ariz. Admin. Code R2-20-211, -220, and -223 ("Rule Amendments") pending before the Governor's Regulatory Review Council ("GRRC").

The proposed amendments are "not illegal, inconsistent with legislative intent or beyond the agency's statutory authority" and meet all other statutory requirements imposed by Title 41. *See* A.R.S. § 41-1052. GRRC should approve the Rule Amendments at its next available meeting.

I. The Commission Submitted the Rule Amendments Pursuant to the Statutes Requiring GRRC Approval of Rules

In November 2018, Arizona voters approved Proposition 306 and removed an exemption from GRRC review for rules proposed under the Clean Elections Act. The Commission has submitted amendments to GRRC since that referendum became effective.

The Voter's Right to Know Act was approved by voters in November 2022. That law, codified at Chapter 6.1 of Title 16, provides an exemption from GRRC review for rules promulgated under that chapter. A.R.S. § 16-974(D). The Rule Amendments here

were first adopted by the Commission prior to the enactment of the Voter's Right to Know Act ("VRKA").[1] Consequently, the Clean Elections Act, not the Voter's Right to Know Act, governs the review of the Rule Amendments.

II. The Commission's Procedures Are Proper and the Rule Amendments Are Lawful.

A. The Statute and Rules Provide a Legal Process for the Issuance of Subpoenas.

The Rule Amendments pertain to rules that have existed since the initial rules created after the 1998 passage of the Clean Elections Act ("CEA"), A.R.S. §§ 16-940 through -961.[2] The Commission has express authority to issue subpoenas and delegate that authority to staff. First, the Act specifically empowers the Commission to subpoena witnesses:

> The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

A.R.S. § 16-956(B). The very next sub-section authorizes the Commission to "adopt rules to carry out the purposes of this article and to govern procedures of the commission." A.R.S. § 16-956(C). In sum, the Commission is statutorily authorized to "adopt rules" that govern the authority of the Commission to "subpoena witnesses." A.R.S. § 16-956 (B),

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[1] Ariz. Clean Elections Comm'n Meeting Packet (Sept. 29, 2022), *available at* https://storageccec.blob.core.usgovcloudapi.net/public/docs/828-9-29-22-Meeting-Packet.pdf.

[2] As recently as September 1, 2020, GRRC considered and accepted the Commission's Five-Year Report that included the baseline rules authorizing the delegation process at issue here. Governor's Regulatory Review Council, September 1, 2020 Council Meeting, Internet Archive (Sept. 1, 2020), https://archive.org/details/9.1.2020-cm.

(C). This includes a procedure, when properly promulgated by the Commission, to delegate that subpoena authority.

It is axiomatic that procedural rules can include the delegation of authority to issue a subpoena. *See, e.g.* A.R.S. § 12-2212 (providing a valid subpoena may be issued by any public officer authorized by law). For example, the Arizona Rules of Civil Procedure authorizes the issuance of subpoenas in civil proceedings. This includes a subpoena requiring the attendance of a witness at a deposition, hearing, or trial, as well as a subpoena *duces tecum* to produce documents. Ariz. R. Civ. P. 45. Indeed, it is a *rule* and not a statute that delegates authority to the "State Bar of Arizona to issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court." Ariz. R. Civ. P. 45(a)(2). This is not surprising. Rulemaking pursuant to statute provides the authority for a number of necessary government functions. *See* A.R.S. § 41-1030 (authorizing rule-making and proscribing restrictions to ensure compliance with statutes).

There is a long line of cases that recognizes just the same type of statutory-regulatory framework employed by the Commission here authorizing the delegation of subpoena power. For example, in *Nat'l Labor Relations Bd. v. Duval Jewelry Co. of Miami*, parties moved to quash subpoenas issued pursuant to an NLRB complaint. 357 U.S. 1 (1958). The NLRB refused to hear the request to quash because the NLRB rules required review by a hearing officer before the Board would consider them. *Id.* at 4. The Court held that "[w]hile there is delegation here, the ultimate decision on a motion to revoke is reserved to the Board, not to a subordinate." *Id.* at 7. Likewise, in *General Engineering, Inc. v. Nat'l Labor Relations Bd.*, 341 F.2d 367 (9th Cir. 1965), the court

explained that while the relevant statute "by its terms, relates only to subpoenas duces tecum, . . . the Board is authorized to make such rules and regulations as may be necessary to carry out the provisions of the Act." *Id.* at 372. The Ninth Circuit held the language authorizing the board to "make such rules and regulations," and then engaging in the act of rulemaking, provided appropriate authorization to apply the statute to subpoenas in other contexts. *Id.*

Indeed, such delegation in enforcement matters by boards and commissions may be *required* as a matter of due process. *See, e.g. Burns v. Ariz. Public Srv'c Co.*, 517 P.3d 624, 632, ¶34 (2022) (recognizing that the Corporation Commission's subpoena power was not "without constraint," limited by its "own limited constitutional authority, as well as the overarching requirements of due process."). For instance, *Horne v. Polk*, holds that an agency may "investigate, prosecute, and adjudicate cases," so long as the final decision-maker does not make the "initial determination of a legal violation, participates materially in prosecuting the case, and makes the final agency decision." *Horne*, 242 Ariz. 226, 230, ¶ 14 (2017).[3]

While *Horne* was the first case to squarely address the procedure for administrative enforcement of campaign finance law in Arizona, it was not the first state or federal case to address due process in the context of administrative proceedings. For that reason, the

[3] While there was discussion of *Legacy Found. Action Fund v. Clean Elections Comm'n,* CV-22-0041-PR (Mar. 2, 2023), during the Study Session on March 28, 2023, the Commission's Motion for Reconsideration in that case remains pending and the Attorney General has filed an amicus in support of that motion. In view of the pending motion, this memorandum does not discuss that case.

rules at issue in the Rule Amendments pre-date *Horne*, and had been promulgated based on the long-standing recognition that due process requires that "no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." *In re Murchison*, 349 U.S. 133, 136 (1955). For this reason, not only is the ability to delegate subpoena authority proper given the plain language of the Clean Elections Act, it is an important due process protection as propounded by the state and federal Supreme Courts.

B. *Cudahy Packing* Is Inapplicable

As the GRRC Staff Attorney memo detailed in its extensive analysis, *Cudahy Packing, Co. v. Holland*, 315 U.S. 357 (1942), is inapplicable. There are a few points that the Commission wants to highlight to explain why the Commission agrees *Cudahy* does not apply here.

First, *Cudahy* is a case of statutory construction; a different statute necessitates a different result. In *Cudahy*, the administrator argued that delegation was authorized by a statute that provided " 'the principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.' " *Id.* at 360. This is not a delegation of authority. It is, as the majority held, a section designating the principal place of business and geographic constraints for the Administration. *Id.* at 361-62. ("We think that the words of the section, read in their statutory setting, make it reasonably plain that its only function is to provide that the Administrator and his representatives may exercise either within or without the District of Columbia such powers as each possesses.").

The generally-applicable principle that can be derived from *Cudahy* is that there must be a legal process that authorizes delegation of investigative authority. The section relied upon by the agency in *Cudahy* was insufficient because it was not a *delegation* of authority, but an authorization to exercise its *extant authority* from the District of Columbia throughout the United States.

Second, federal laws enacted contemporaneously with the legislation at issue, providing agencies with authority to regulate in similar ways, expressly provided authority to delegate subpoena power when it was the will of Congress to include it. The majority opinion names a number of legislative acts, including the Federal Trade Commission Act "whose subpoena provisions were adopted by the present Act," which did not include delegation authority. *Id.* at 364. And those agencies, in absence of an authorization of delegation authority, had never "construed the authority of its head to include the power to delegate the signing and issuance of subpoenas." *Id.* at 365. In contrast, "Congress, in numerous cases, has specifically authorized delegation of the subpoena power" to subordinates. *Id.* Given this context, in *Cudahy* it was consistent with federal agency practice to find that there was *not* authority to delegate subpoena authority.

Third, Congressional intent *not* to delegate authority in *Cudahy* was apparent due to the fact that the authority to delegate subpoena power was included in a prior version of the statute, but removed and never re-inserted. *Id.* at 366. In fact, the case discusses a number of ways the statute was changed to eliminate or restrict the ability to delegate authority. *Id.* at 366-67.

Finally, other courts agree on the limited utility of *Cudahy*. The Federal Circuit Court of Appeals has also examined *Cudahy*, specifically the argument that because Congress explicitly gave a director a specific power, but not the authority to delegate, the intent was that there could be no delegation. *Ethicon Endo-Surgery, Inc. v. Covidien LP*, 812 F.3d 1023, 1031 (Fed. Cir. 2016). The court disagreed, noting "[t]he implicit power to delegate to subordinates by the head of an agency was firmly entrenched in *Fleming v. Mohawk Wrecking & Lumber Co.*" *Ethicon Endo-Surgery, Inc.*, 812 F.3d at 1031. Furthermore, "[t]he Supreme Court has not cited *Cudahy* since 1958 and the lower courts no longer follow it," *id*. at 1032 (citation and internal quotations omitted), with "*Cudahy* simply stand[ing] for the unremarkable proposition that congressional intent to preclude delegation can sometimes be found in the legislative history." *Id*. Much like *N.L.R.B. v. Lewis,* 249 F.2d 832 (9th Cir. 1957), cited to by the Staff Attorney Memo, *Ethicon* provides persuasive guidance that *Cudahy* does not impose a requirement of explicit provision of delegation authority.

Given the points above, *Cudahy* must be read in its proper context. It is a case that relies upon the plain language of a federal statute that did not authorize the delegation of authority, and further statutory context indicated that delegation authorization was considered and rejected by Congress and had not been exercised by similar agencies. Furthermore, *Cudahy* has been critiqued or ignored "since 1958." *Ethicon Endo-Surgery, Inc.,* 812 F.3d at 1031. *Cudahy* is inapposite to the Rule Amendments before GRRC, and provides no basis to return the Rule Amendments.

C. The Commission's Statutory-Regulatory Framework Properly Delegates Authority to Issue Subpoenas.

The statutory-regulatory framework provided by the Clean Elections Act is "consistent with the statute [and] reasonably necessary to carry out the purpose of the statute." A.R.S. § 41-1030(A). The Clean Elections Act directs the Commission to "enforce this article" and to "adopt rules to carry out the purposes of this article and to govern procedures of the commission." A.R.S. § 16-956(B), (C). To protect the rights of respondents before the Commission, the Commission has, by rule, separated the prosecutorial and decision-making functions as required by due process. This is consistent with Arizona law and procedure, as well as a long line of court cases approving limited delegation of authority in similar circumstances.

The commission has not delegated the unfettered authority to subpoena at will, as was the concern in *Cudahy*. Instead, the Executive Director must be authorized by the Commission to issue the subpoena. *See* Proposed Amend. R2-20-211(A). The Commission will continue to adjudicate in its neutral capacity the scope and extent of a subpoena on a motion by the respondent. Ariz. Admin. Code R2-20-213. Because the Rule Amendments are lawful exercises of the rulemaking power and *Cudahy* is inapposite, GRRC may not reject the rules on these grounds and should approved them at its next meeting.

D. The Term "Legal Services" is clear, concise and understandable to the general public.

While the term "legal services" is not defined in the Clean Elections Act, it is a clear, reasonable, and understandable term. The term "legal services" is neither vague

nor confusing. The plain meaning of the term is "work done by a lawyer for a client." *See* "legal services," *Cambridge Dictionary*, https://dictionary.cambridge.org/us/dictionary/english/legal-services (accessed March 31, 2023). Because A.R.S. § 16-979 does not apply to the Clean Elections Act, a mere editorial suggestion is not sufficient to return the rule. Consequently, GRRC should approve the Rule Amendments.

III. Conclusion

The Commission submitted the Rule Amendments to GRRC pursuant to A.R.S. §§ 41-1024, -1052. The Rule Amendments meet all of the requirements set forth in A.R.S. § 41-1052(D). The applicable case law and statutes demonstrate clearly and convincingly that the Rule Amendment are lawful and there is no good faith basis to return them. Respectfully, |GRRC should approve them at its earliest convenience.

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 7, 2023; April 4, 2023

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

FROM: Council Staff

DATE: March 15, 2023

SUBJECT: **CITIZENS CLEAN ELECTION COMMISSION**
Title 2, Chapter 20

Amend: R2-20-211, R2-20-220, R2-20-223

Staff Update:

The Citizens Clean Election Commission ("Commission") submitted a rulemaking package to the Council seeking to amend three rules in Title 2, Chapter 20, Article 2. Specifically, the Commission sought to amend rules R2-20-211 to allow the Executive Director of the Commission to delegate authority to issue subpoenas and take depositions to "any person authorized to provide legal services." Similarly, the Commission sought to amend R2-20-223 to allow "any person authorized to provide legal services on behalf of the Commission" to draft and serve notice of an appealable agency action rather than only the Assistant Attorney General.

This rulemaking was considered at the Governor's Regulatory Review Council ("Council") Study Session on February 28, 2023 and Council Meeting on March 7, 2023. At the March 7, 2023 Council Meeting, Council Member Bentley questioned whether the Commission had authority to delegate its subpoena power. Specifically, Council Member Bentley cited *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942) as prohibiting agency delegation of subpoena power unless expressly authorized. Council Member Bentley requested Council staff provide additional information clarifying the concerns raised. Ultimately, the Council voted to

table consideration of this rulemaking to the March 28, 2023 Study Session and April 4, 2023 Council Meeting. Council staff has prepared this memorandum analyzing the concerns raised.

I. QUESTIONS PRESENTED

1. Does statute grant the Commission authority to delegate issuing subpoenas, taking depositions, and drafting and serving notices of an appealable agency action?

2. Does *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942) prohibit delegation of subpoena power by an agency when delegation authority was not expressly granted by statute?

3. Is the term "legal services," included in the proposed amended language in Commission rules R2-20-211 and R2-20-223, defined in either the Commission's rules or statutes?

III. ANALYSIS

1. Does statute grant the Commission authority to delegate issuing subpoenas, taking depositions, and drafting and serving notices of an appealable agency action?

Short Answer:

Yes. A.R.S. § 16-979(C) states "[n]otwithstanding any law, the [C]ommission has exclusive and independent authority to select legal counsel to represent the [C]ommission regarding its duties under this chapter…." Those duties include subpoenaing witnesses, compelling their attendance and testimony, administering oaths and affirmations, taking evidence and requiring by subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or the exercise of its powers. *See* A.R.S. § 16-956(B). Additionally, the Commission may "[i]ssue and enforce civil subpoenas, including third-party subpoenas," "[i]nitiate enforcement actions," "[c]onduct fact-finding hearings and investigations," and "[p]erform any other act that may assist in implementing this chapter." *See* A.R.S. § 16-974(A)(1)-(4) & (8).

Full Analysis:

It may be argued that the Commission's authority to select legal counsel "to *represent the Commission* regarding its duties" merely grants the Commission authority to hire legal counsel to defend the Commission if it is sued in the course of carrying out its duties, rather than delegating the above-referenced duties to legal counsel to carry out. However, A.R.S. §

16-979(C) makes the distinction between legal counsel "representing" the Commission regarding its duties and "defending" the Chapter if its validity is challenged.

As a rule of statutory construction, one must apply the plain language of the statute and, if the language is clear and unambiguous, there is no need to look to rules of construction or to legislative history; the statute's plain meaning is applied. *See NLRB v. Lewis*, 249 F.2d 832, 835 (9th Cir. 1957). The term "represent" means "to take the place of in some respect" or "to act in the place of or for usually by legal right." *See* "represent." *Merriam-Webster.com*. 2023. https://www.merriam-webster.com (13 March 2023); *see also*, *Ballentine's Law Dictionary* (3d ed. 2010) ("To act for. To stand in the place of."). On the other hand, the term "defend," in the legal context, means "to oppose a claim or an action; to plead in defense of an action; to contest an action suit or proceeding." *See Ballentine's Law Dictionary* (3d ed. 2010). If the first clause of A.R.S. § 16-979(C) was meant to merely grant the Commission authority to hire legal counsel to *defend* the Commission in a claim or cause of action related to carrying out its duties, it would have read "to *defend the Commission* regarding its duties" rather than "represent." As it stands, the plain meaning of the first clause of A.R.S. § 16-979(C) appears to allow the Commission to select legal counsel to act in the place of or for the Commission regarding its duties as outlined above, including issuing subpoenas.

Furthermore, the assertion that the first clause of A.R.S. § 16-979(C) merely grants the Commission authority to hire legal counsel to defend the Commission if it is sued in the course of carrying out its duties is contradicted by the second clause of A.R.S. § 16-979(C), which states the Commission has authority to select legal counsel to defend the Chapter if its validity is challenged. Legal challenges to A.R.S. Title 16, Chapter 6 would include legal challenges related to the Commission's duties under that same Chapter. As such, an interpretation that "represent the Commission regarding its duties" is limited to legal defense of the Commission in carrying out its duties under the Chapter would be redundant. The "surplusage canon" of statutory construction indicates, in determining the ordinary meaning of a statute, effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.

Ultimately, the plain language of the statutes states the Commision has exclusive and independent authority to select legal counsel to represent the Commission, meaning to act for or in place of, regarding issuance and enforcement of civil subpoenas, including third-party subpoenas; initiating enforcement actions; conducting fact-finding hearings and investigations; imposing civil penalties for noncompliance; and seeking legal and equitable review in court, among other duties as outlined above. The Commission may delegate the issuance of subpoenas to legal counsel it selects.

2. Does *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942) prohibit delegation of subpoena power by the Commission?

Short Answer:

No. Given that the statute specifically grants the Commision authority to select legal counsel to represent the Commission regarding its duties, and those duties include subpoenaing witnesses and documents pursuant to A.R.S. § 16-979(C), the holding of *Cudahy Packing Co.* is not controlling.

Full Analysis:

a. *Cudahy Packing Co. v. Holland*

In *Cudahy*, a regional director of the Wage and Hour Division of the Department of Labor issued a subpoena to Cudahy Packing Co. ("Petitioner"), demanding the production of books, papers, and records relating to wages and hours and purchases and shipments. *Cudahy*, 315 U.S. at 358-59. On appeal to the Supreme Court, the question was raised as to whether, under the Fair Labor Standards Act, 52 Stat. 1060, 29 U.S.C. § 201, *et seq*. ("Act"), the Administrator of the Wage and Hour Division of the Department of Labor has authority to delegate his statutory power to sign and issue a subpoena duces tecum to a regional director. *Id.* at 358.

Section 11 of the Act authorized the Administrator and his designated representatives to conduct investigations which he may deem necessary to determine whether any person has violated any provision of the Act, or which may aid in the enforcement of the provisions of the Act. Unlike the statutes at issue here (*see* A.R.S. § 16-974) the Act did not define the Administrator's power to issue subpoenas or specifically authorize him to delegate it to others. However, for the purposes of any hearing or investigation, § 9 of the Act made applicable to the powers and duties of the Administrator, the subpoena provisions of a separate act, §§ 9 and 10 of the Federal Trade Commission Act. 15 U.S.C.S. §§ 49 and 50. The Administrator was thus given all the powers with respect to subpoenas which are conferred upon the Federal Trade Commission, and no more.

Specifically, under § 9 of the Federal Trade Commission Act, 15 U.S.C.S. § 49, the Commission may require the attendance and testimony of witnesses, and production of documents by subpoena; and any members of the Commission may sign the subpoenas. The Commission may apply to any district court within whose jurisdiction an investigation is carried on for an order compelling compliance with a subpoena.

Given this statutory structure, the Administrator argued that he was given authority to delegate to to regional directors the signing and issuance of subpoenas by § 4(c) of the present Act, and that, in any case, this authority is to be implied from the structure of the Act and the nature of the duties which are imposed upon him. *Id.* at 360. Section 4(c) provided: "The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place."

The Court held that the words of § 4(c), read in their statutory setting, make it reasonably plain that its only function is to provide that the Administrator and his representatives may exercise either within or without the District of Columbia such powers as each possesses. *Id.* at 361-62. The Court stated that, under the language in the Act, the power of the Administrator to delegate his power to sign and issue subpoenas could not be inferred, either from the extensive nature of the Administrator's duties, or from the fact that, under Section 11 of the Act, he is empowered, through designated representatives, to gather data and make investigations authorize by the Act. *Id.* at 363-64. The Court held that subpoena power shall be delegable only when an authority to delegate is expressly granted. *Id.* at 366. Furthermore, the Court noted that the legislative history of the Act showed that the authority to delegate the subpoena power was eliminated by the Conference Committee from the bills which each House had adopted. *Id.* Such authority expressly granted in the bill which passed the Senate, was rejected by the Conference Committee. *Id.*

Here, unlike in *Cudahy*, the plain language of A.R.S. § 16-979(C) authorizes delegation of the Commission's duties, including the duty to issue subpoenas. As such, the authority to delegate is expressly granted and the Commission is not attempting to infer such authority from statutory language as was the case in *Cudahy*. Additionally, unlike in *Cudahy*, there is no evidence in the history of the Citizens Clean Elections Act, established by ballot initiative in 1998, or the Voters' Right to Know Act (see 2022 AZ Init. Meas. 4, § 3, approved as Proposition 211, effective December 5, 2022), which added A.R.S. § 16-979, showing that a provision granting authority to delegate the subpoena power was eliminated or restricted. Therefore, the facts at issue in *Cudahy* are different from those surrounding the Commission's rules and its holding does not apply.

b. *Fleming v. Mohawk Wrecking & Lumber Co*

While *Cudahy* was cited at the March 7, 2023 Council Meeting, the authority of agencies to delegate subpoena power, specifically the Court's holding in *Cudahy*, was considered in a separate Supreme Court case, *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111 (1947), decided five years later. In *Fleming*, the Court found that the Price Administrator of the Office

of Price Administration could delegate to district directors authority to sign and issue subpoenas. *Id.* at 122.

Fleming dealt with Section 201(a) of the Emergency Price Control Act which provided, in part, "[t]he Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended." Furthermore, Section 201(b) of the Emergency Price Control Act provided, "[t]he principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place."

While these provisions were practically identical to those considered in *Cudahy*, the Court in *Fleming* determined the decision in *Cudahy* did not control. *Id.* at 120 Specifically, the Court in *Fleming* found that the legislative history of the Act involved in the *Cudahy* case showed that a provision granting authority to delegate the subpoena power had been eliminated when the bill was in Conference. *Id.* On the other hand, the Court noted the Senate Committee in reporting the bill that became the Emergency Price Control Act described § 201(a) as authorizing the Administrator to "perform his duties through such employees or agencies by delegating to them any of the powers given to him by the bill." *Id.* Furthermore, the Court noted that § 201(b) authorized him or "any representative or other agency to whom he may delegate any or all of his powers, to exercise such powers in any place." *Id.* at 120-21 (*citing* S. Rep. No. 931, 77th Cong., 2d Sess., pp. 20-21.) The Court in *Fleming* also noted in *Cudahy*, the Act made expressly delegable the power to gather data and make investigations, thus lending support to the view that when Congress desired to give authority to delegate, it said so explicitly. *Id.* at 121. In the Emergency Price Control Act, the Court noted there was no provision which specifically authorizes delegation as to a particular function. *Id.* In *Cudahy*, the Act made applicable to the powers and duties of the Administrator the subpoena provisions of the Federal Trade Commission Act, §§ 9 and 10, 38 Stat. 722, 723, 15 U. S. C. §§ 49 and 50, which only authorized either the Commission or its individual members to sign subpoenas. *Id.* The Court in *Fleming* noted the subpoena power under the Emergency Price Control Act was found in § 202(b) and was not dependent on the provisions of another Act having a history of its own. *Id.*

Furthermore, the Court noted the Act involved in *Cudahy* granted no broad rulemaking power. *Id.* However Section 201(d) of the present Act provided, "[t]he Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act." The Court stated, such a rulemaking power may itself be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld. *Id.* (citing *Plapao Laboratories v. Farley*, 92 F.2d 228 (D.C. Cir. 1937)). The Court found there was no provision in the

Emergency Price Control Act negating the existence of such authority, so far as the subpoena power is concerned, nor can the absence of such authority be fairly inferred from the history and content of the Act. *Id.* at 121-22. Thus, the Court held that the presence of the rulemaking power, together with the other factors differentiating this case from *Cudahy*, indicates that the authority granted by § 201(a) and (b) should not be read restrictively. *Id.* at 122.

c. *NLRB v. Lewis*

In another case decided by the 9th Circuit Court of Appeals, *NLRB v. Lewis*, 249 F.2d 832 (9th Cir. 1957), the Court also held that a Regional Director of the National Labor Relations Board could issue subpoenas under the facsimile signature of a Board member. *Id.* at 835. The General Counsel, by the Regional Director in Los Angeles, California, filed a consolidated complaint against the Lewis Food Company and the Association of Independent Workers of America, alleging that the company and the union were engaging in various unfair labor practices in violation of the Labor-Management Relations Act of 1947. *Id.* at 833. Pursuant to the written request of counsel for the General Counsel, the Regional Director, acting under Section 11(1) of the Act, 29 U.S.C.A. 161(1); issued the subpoenas in question under the seal of the Board and the facsimile signature of Abe Murdock, a member of the Board. *Id.*

Section 11(1) of the Labor-Management Relations Act of 1947 provided that, "the Board, or any member thereof, shall upon application of any party to such proceedings, forthwith 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." The Court in *Lewis* noted that, while Section 11(1) explicitly empowers only the Board, or a member thereof, to perform certain functions, nowhere in the Labor-Management Relations Act of 1947 does it make the particular powers delegable nor expressly prohibit delegation. *Id.* at 835. Furthermore, the Court in *Lewis* noted all courts that had considered the delegability of the Board's subpoena issuing power to a Regional Director had interpreted Section 11(1) of the Labor-Management Relations Act of 1947 as empowering the Board to delegate the subpoena power. *Id.* (*citing National Labor Relations Board v. John S. Barnes Corp.*, 190 F.2d 127 (7th Cir. 1951) and *Jackson Packing Co. v. National Labor Relations Board*, 204 F.2d 842 (5th Cir. 1953)). As such, the Court held that subpoenas may validly be issued by a Regional Director under the facsimile signature of a Board member. *Id.*

Interestingly, the Court in *Lewis* also stated that neither *Cudahy* nor *Fleming* were controlling. *Id.* The Court noted the *Cudahy* decision merely held that the Fair Labor Standards Act, 29 U.S.C.A. 201 *et seq*. did not grant the Administrator the power to delegate his subpoena power to subordinates, while on the other hand, the *Fleming* case held that the Administrator of the Emergency Price Control Act, 50 U.S.C.A. Appendix, 901 *et seq*. was authorized to delegate

the authority to issue subpoenas. *Id.* The Court found each of those cases involved the construction of a statute different from Section 11(1) of the Labor-Management Relations Act of 1947 at issue in *Lewis*. *Id.* Accordingly, the Court held those decisions, one upholding the delegability of this power and the other denying it, did not govern the instant case. *Id.*

Finally, the Court in *Lewis* addressed the fact that counsel for the General Counsel, not the General Counsel himself, sought the subpoenas. *Id.* at 838. To that point, the Court stated, "[n]o citation of cases is necessary to restate the rule that in legal contemplation counsel representing counsel occupies the identical legal status of the person he represents." *Id.* As such, the Court found, if the General Counsel could apply for the issuance of subpoenas, as the Court had held, counsel representing him could also do so validly. *Id.*

d. *Applicability of case law to Commission's authority to delegate subpoena power.*

In the current circumstance, as noted in *Lewis*, the applicability of the holdings in *Cudahy* and even *Fleming*, are limited as they involved construction of different statutes from those at issue here. For that reason alone, *Cudahy* is not controlling as related to whether the Commission's subpoena power is delegable under its statutes. However, in the absence of a Court's interpretation of the present statutory provisions, we can look to the above cases for guidance. In that regard, the circumstance here is more similar to that found in *Fleming* than *Cudahy*. As an initial matter, as outlined above, the plain language of the statute authorizes delegation of the Commission's duties, including the duty to issue subpoenas. As outlined in *Lewis*, this should be dispositive and we need not look to legislative history. However, if we do, unlike in *Cudahy*, here there is no evidence in the history of the Citizens Clean Elections Act, established by ballot initiative in 1998, or the Voters' Right to Know Act (*see* 2022 AZ Init. Meas. 4, § 3, approved as Proposition 211, effective December 5, 2022), which added A.R.S. § 16-979, showing that a provision granting authority to delegate the subpoena power was eliminated or restricted.

Furthermore, unlike *Cudahy* and more like *Fleming*, A.R.S. § 16-979(C) does not restrict delegation to a particular function, instead stating legal counsel may "represent the [C]ommission regarding its duties under this chapter" without limitation as to which duties those are. Additionally, like the Emergency Price Control Act in *Fleming*, which granted the Administrator the authority to "issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act", here the Commission may "perform any other act that may assist in implementing this chapter." *See* A.R.S. § 16-974(A)(8). As outlined in *Fleming*, such a grant of power "may itself be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld." *Fleming*, 331 U.S. at 121. As in *Fleming*, and as outlined

above, there is no provision restricting delegating authority, so far as the subpoena power is concerned, "[n]or can the absence of such authority be fairly inferred from the history and content" of the Citizens Clean Elections Act and Voters' Right to Know Act. Thus, the presence of the power in A.R.S. § 16-974(A)(8), together with the other factors differentiating this case from *Cudahy* and making it similar to *Fleming*, indicates that the authority granted by A.R.S. § 16-979(C) should not be read restrictively. In fact, 2022 AZ Init. Meas. 4, § 5(3) of the Voters' Right to Know Act states, "[t]he rights established by this Act shall be construed broadly." Therefore, the Commission does have authority to delegate its subpoena power to legal counsel selected to represent the Commission, and that legal counsel may even subdelegate to legal counsel.

3. Is the term "legal services," included in the proposed amended language in Commission rules R2-20-211 and R2-20-223, defined in the Commission's rules or statutes?

Short Answer:

No. The term "legal services" is not defined in either the Commission's rules or statutes.

Full Analysis:

The proposed amendments to rule R2-20-211(A) and (B) state the Executive Director of the Commission may delegate the authority to issue subpoenas and take depositions "to any person authorized to provide legal services." Likewise, the proposed amendments to rule R2-20-223 states "any person authorized to provide legal services on behalf of the Commission" shall draft and serve notice of appealable agency action.

The term "legal services" is not defined in the Commission's rules or statutes. However, the Rules of the Supreme Court of Arizona defines "practice of law" to mean, "*providing legal advice or services* to or for another by: (1) preparing or expressing legal opinions to or for another person or entity; (2) representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation; (3) preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal; (4) negotiating legal rights or responsibilities on behalf of a specific person or entity; or (5) preparing a document, in any medium, intended to affect or secure a specific person's or entity's legal rights." *See* A.R.S. Sup.Ct.Rules 75(b) (emphasis added).

Additionally, the Rules of the Supreme Court of Arizona and Rules of Professional Conduct state, "[a] lawyer in a firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyers engaged in activities assisting lawyers in providing legal services…is compatible with the professional obligations of the lawyer." *See* A.R.S. Sup.Ct.Rules, Rule 42(a); Rules of Prof.Conduct, ER 5.3(a). Specifically, lawyers shall "ensure that nonlawyers assisting in the delivery of legal services or working under the supervision of a lawyer comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all lawyer client information protected by ER 1.6." *Id.*

As such, it appears the scope of the term "legal services" would include lawyers issuing subpoenas, taking depositions, or drafting and serving appealable agency actions. However, the Rules of the Supreme Court of Arizona and Rules of Professional Conduct also contemplate nonlawyers "assisting lawyers in providing legal services."

To increase clarity of the rule, it may make sense to mirror the language found in A.R.S. § 16-979(C) for both rules to state that the Executive Director may delegate the authority to issue subpoenas and take depositions to legal counsel selected by the Commission to represent it or that such legal counsel selected by the Commission to represent it shall draft and serve notice of appealable agency action. However, Council staff believes the rules are sufficiently clear, concise, and understandable as written pursuant to A.R.S. § 41-1052(D)(4) as related to the term "legal services" as it is generally understood in the legal profession.

IV. CONCLUSION

The plain language of the statutes states the Commision has exclusive and independent authority to select legal counsel to represent the Commission, meaning to act for or in place of, regarding issuance and enforcement of civil subpoenas, including third-party subpoenas; initiating enforcement actions; conducting fact-finding hearings and investigations; imposing civil penalties for noncompliance; and seeking legal and equitable review in court, among other duties as outlined above. The Commission may delegate the issuance of subpoenas to legal counsel it selects.

Additionally, there is no evidence in the history of the Citizens Clean Elections Act or the Voters' Right to Know Act, showing that a provision granting authority to delegate the subpoena power was eliminated or restricted. Furthermore, A.R.S. § 16-979(C) does not specifically authorize delegation as to a particular function, instead stating legal counsel may "represent the [C]ommission regarding its duties under this chapter" without limitation as to which duties those are. Also, the presence of the power in A.R.S. § 16-974(A)(8) to "perform any other act that

may assist in implementing this chapter" provides an adequate source of authority itself, absent express provision of the statutes or implication it has been withheld. The Commission does have authority to delegate its subpoena power to legal counsel selected to represent the Commission, and that legal counsel may subdelegate to legal counsel.

Finally, while the term "legal services" is not defined in the Commission's rules or statutes, and tracking the language in A.R.S. § 16-979(C) may make the scope of the rule clearer, as written, Council staff believes the rules are sufficiently clear, concise, and understandable as written pursuant to A.R.S. § 41-1052(D)(4) as related to the term "legal services" as it is generally understood in the legal profession.

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: March 7, 2023

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

FROM: Council Staff

DATE: February 13, 2023

SUBJECT: **CITIZENS CLEAN ELECTION COMMISSION**
Title 2, Chapter 20

Amend: R2-20-211, R2-20-220, R2-20-223

Summary:

This regular rulemaking from the Citizens Clean Election Commission (Commission) seeks to amend three (3) rules in Title 2, Chapter 20, Article 2 regarding Compliance and Enforcement Procedures. Specifically, the Commission is amending its rules to clarify how the Commission may issue subpoenas, take depositions, prevent ex parte communications, and draft notices of appealable agency actions. For example, the Commission is clarifying that the Executive Director may delegate the authority to issue subpoenas and take depositions to any person authorized to provide legal services for the Commission and such person may also draft and serve notice of an appealable agency action.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Commission has both general and specific statutory authority for these rules. A.R.S. § 16-956(C) states, "[t]he commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission." A.R.S. § 16-956(A)(6) states, the Commission shall "[a]dopt rules to implement the reporting requirements of section 16-958, subsections D

and E." Furthermore, A.R.S. § 16-956(A)(7) states the Commission shall, "[e]nforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund."

A.R.S. § 16-956(B) also states, "[t]he commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers." Additionally, A.R.S. § 16-974(A) states the Commission may "[a]dopt and enforce rules," "[i]ssue and enforce civil subpoenas, including third-party subpoenas," "[i]nitiate enforcement actions," "[c]onduct fact-finding hearings and investigations," and "[p]erform any other act that may assist in implementing this chapter." *See* A.R.S. § 16-974(A)(1)-(4) & (8).

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

This rulemaking does not establish a new fee or contain a fee increase.

3. 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 Commission indicates it did not review or rely on any study relevant to the proposed amended rules.

4. Summary of the agency's economic impact analysis:

The Commission states that the rule revisions are intended to simplify and clarify responsibility for procedures relating to compliance and enforcement. There is little to no economic, small business, or consumer impact, other than the cost to the Commission to prepare the rule package, because the rulemaking simply clarifies statutory requirements and processes that already exist. Thus, the economic impact is minimized.

5. 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 Commission believes this is the least intrusive or less costly method for completing its objectives with the rulemaking.

6. What are the economic impacts on stakeholders?

The Commission states that the primary group impacted by these rules would be candidates for state and legislative office, political parties and committees, nonprofits, and other groups that make candidate related expenditures. The Commission believes that the amendments should help with ease of implementing the compliance and enforcement of rules and should not

increase costs for impacted parties. The amendments are intended to lower or eliminate transaction costs associated with ensuring compliance and enforcement procedures.

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

The Commission indicates there were not changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council

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

The Commission indicates it did not receive any public comments related to this rulemaking.

9. 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.

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

The Commission indicates there are no corresponding federal laws applicable to the subject of this rulemaking.

11. Conclusion

This regular rulemaking from the Citizens Clean Election Commission (Commission) seeks to amend three (3) rules in Title 2, Chapter 20, Article 2 regarding Compliance and Enforcement Procedures. Specifically, the Commission is amending its rules to clarify how the Commission may issue subpoenas, take depositions, prevent ex parte communications, and draft notices of appealable agency actions.

The Commission is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

December 28, 2022

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 2. Administration
Chapter 20. Citizens Clean Elections Commission

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 15, 2022 following a period for public comment and an oral proceeding.

2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.

3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.

4. Immediate effective date: An immediate effective date is not requested.

5. Certification regarding studies: I certify that the Commission did not rely on any studies for this rulemaking.

8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

9. List of documents enclosed:
    a. Cover letter signed by the Commission's Executive Director;
    b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
    c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Tom Collins
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

1. Articles, Parts, and Sections Affected	Rulemaking Action
R2-20-211	Amend
R2-20-220	Amend
R2-20-223	Amend

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

Authorizing statute: A.R.S. §§ 16-956(A)(6) and (A)(7)

Implementing statutes: A.R.S. § 16-948(C)

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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. 3489, October 28, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3409, October 28, 2022

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

Name: Tom Collins, Executive Director

Address: Citizens Clean Elections Commission
1802 W. Jackson St.
Phoenix, AZ 85007
Telephone: (602) 364-3477
E-Mail: ccec@azcleanelections.gov
Web site: www.azcleanelections.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 Commission needs to amend its rules to clarify how the Commission may issue subpoenas, take depositions, prevent ex parte communications, and draft notices of appealable agency actions. Such clarification will ensure the rules are clear, concise, and consistent and the public is aware of how the Commission ensures compliance with clean elections rules and statutes.

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:

No study was reviewed.

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:

There is little to no economic, small business, or consumer impact, other than the cost to the Commission to prepare the rule package, because the rulemaking simply clarifies statutory requirements and processes that already exist. Thus, the economic impact is minimized.

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

There were no changes between the proposed rulemaking and the final rulemaking.

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

The Commission held an Oral Proceeding on December 15, 2022 and no comments were received.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to

Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable.

b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable.

c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

13. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

No materials are incorporated by reference.

14. **Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable.

15. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

Section

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions

A. The Commission may authorize its Executive Director ~~or Assistant Attorney General~~ to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise. The Executive Director may delegate the authority to issue subpoenas to any person authorized to provide legal services. The Executive Director's delegee may delegate this authority to any person authorized to provide legal services as the Executive Director's delegee deems necessary.

B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths. The Executive Director may delegate the authority to take depositions to any person authorized to provide legal services. The Executive Director's delegee may delegate this authority to any person authorized to provide legal services as the Executive Director's delegee deems necessary.

C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

R2-20-220. Ex Parte Communications

A. In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as

required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.

B. This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.

C. Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any staff member or other authorized representative of the Commission or the Commission staff ~~attorney or the Administrative Counsel or the Assistant Attorney General~~ in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission representative ~~attorney~~ or staff member shall bind or estop the Commission.

R2-20-223. Notice of Appealable Agency Action

If the Commission makes a probable cause finding pursuant to R2- 20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-217, ~~the~~ any person authorized to provide legal services on behalf of the Commission ~~Assistant Attorney General (AAG)~~ shall draft and serve

notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated and specific facts constituting the violation;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT [1]

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

1. Identification of the rulemaking:

   The Commission needs to amend its rules related to Compliance and Enforcement Procedures.

   a. The conduct and its frequency of occurrence that the rule is designed to change:

   b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

   c. The estimated change in frequency of the targeted conduct expected from the rule change:

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

   Candidates for state and legislative office, Political Parties, and Political Committees are directly affected. Additionally, organizations that have tax status under Section 501(a) of the internal revenue code and are either (a) authorized to make candidate related expenditures or, (b) make such expenditures are directly affected. Finally, persons who are agents of any of the above are directly affected.

5. Cost-benefit analysis:

[1] If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

No state agencies are directly affected by the rulemaking and no new FTEs are required.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

c. Costs and benefits to businesses directly affected by the rulemaking:
No businesses are directly affected by this rulemaking.

6. Impact on private and public employment:
There is not impact of private and public employment.

7. Impact on small businesses[2]:
   a. Identification of the small business subject to the rulemaking:
   Small businesses subject to this rulemaking may include political committees and nonprofits that make expentures and those serve as agents of those entities or other subject to enforcement of substantive law.

   b. Administrative and other costs required for compliance with the rulemaking:
   The Commission does not anticipate administrative or other costs for compliance with these procedural amendments. The amendments are intended

[2] Small business has the meaning specified in A.R.S. § 41-1001(20).

to simplify and clarify responsibility for certain procedures in the context of compliance and enforcement.

d. Description of methods that may be used to reduce the impact on small businesses:

The agency is open to any of the methods prescribed in section 41-1035. None of them apply to these amendments.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

The amendments do not impact private or public employment among any person directly affected by the amendments.

9. Probable effects on state revenues:

The amendments have no probable impact on state revenues.

10. Less intrusive or less costly alternative methods considered:

The Commission believes this is the less intrusive or less costly method. The amendments are intended to lower or eliminate transaction costs associated with ensuring compliance and enforcement procedures are clearer and simpler.

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

Authority: A.R.S. § 16-956(A)(7)

Supp. 22-1

Editor's Note: The Office of the Secretary of State, Administrative Rules Division, complied with its legal obligation to publish the Notice of Rule Expiration filed for Sections R2-20-109 and R2-20-111 under A.R.S. § 41-1011(C) and 41-1056(G) and (J)(2) in Supp. 17-2, version 2. As a courtesy to the Commission, the Office also published R2-20-109 and R2-20-111 as adopted and made by the Commission because it stated the Governor's Regulatory Review Council did not have the authority to file such a notice. On December 14, 2017, the Commission "re-adopted" rules in the disputed Sections of R2-20-109 and R2-20-111; therefore, our Division has removed the expired rule Sections as published in Supp. 17-2, version 2. The Office will not interpret the legality of any actions made by the Commission or the Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.

Editor's Note: The Citizen's Clean Elections Commission has filed a Notice of Public Information with the Office of the Secretary of State (Office) stating the Governor's Regulatory Review Council (G.R.R.C.) "cannot effectively repeal the rules" in this Chapter. The Notice also states, "persons subject to the Act and Rules are advised that it is the Commission's position [sic] that an action of G.R.R.C…. cannot relieve them of their obligations under the Act and Rules." [published at 23 A.A.R. 1761]

The Office has received a Notice of Rule Expiration from the G.R.R.C. stating R2-20-109 and R2-20-111 have automatically expired [published at 23 A.A.R. 1757]. Under A.R.S. § 41-1056(G), our Office publishes filed G.R.R.C. notices and has included the rule expiration in this Chapter. Since the Office is merely the publisher, it has not, nor will it interpret the legality of the G.R.R.C. authority to "effectively repeal rules."

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor's Note: This Chapter contains rules that were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 16-956(D). Exemption from A.R.S. Title 41, Chapter 6 means that these rules were not certified by the Attorney General or the Governor's Regulatory Review Council. Because this Chapter contains rules that are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.

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ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R2-20-101 through R2-20-113, repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001; new Article 1, consisting of Sections R2-20-101 through R2-20-112, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

Article 1, consisting of Sections R2-20-101 through R2-20-113, adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2).

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

Article 2, consisting of Sections R2-20-201 through R2-20-231, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

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ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

Article 3, consisting of Sections R2-20-301 through R2-20-312, made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

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ARTICLE 4. AUDITS

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ARTICLE 7. USE OF FUNDS AND REPAYMENT

Article 7, consisting of Sections R2-20-701 through R2-20-710, made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 1. GENERAL PROVISIONS

R2-20-101. Definitions

In addition to the definitions provided in A.R.S. § 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. "Campaign account" means an account at a financial institution designated by a political committee that is used solely for political campaign purposes.
4. "Candidate" means a natural person who receives or gives consent for receipt of a contribution for the person's nomination for or election to any office in this state, and includes the person's campaign committee, the political committee designated and authorized by the person, or any agents or personnel of the person. When not otherwise specified by statute or these rules, "Candidate" includes a Candidate for Statewide Office or a Legislative Candidate.
5. "Candidate for Statewide Office" means:

A natural person seeking the office of governor, attorney general, secretary of state, treasurer, superintendent of public instruction, or mine inspector

.

6. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
7. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
8. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. "Executive Director" means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. "Expressly advocates" means:
    a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
    b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents.
    c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.
12. "Extension of credit" means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. "Family member" means parent, grandparent, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members, regardless of whether the relation is established by marriage or adoption.
14. "Fair market value" means the amount 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.
15. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
17. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
19. "Legislative Candidate" means:

A natural person seeking the office of state senator or state representative.

20. "Officeholder" means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
21. "Person," unless stated otherwise, or having context requiring otherwise, means:

A corporation, company, partnership, firm, association or society, as well as a natural person.

22. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
23. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.

24. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
25. "Unopposed" means in reference to state senate candidates and statewide candidates other than Corporation Commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and Corporation Commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office sought.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 3515, effective September 27, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 23 A.A.R. 113, effective December 15, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 491 (March 4, 2022), with an immediate effective date of February 7, 2022 (Supp. 22-1).

R2-20-102. Repealed

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Repealed by exempt rulemaking at 19 A.A.R. 3518, effective September 27, 2013 (Supp. 13-4).

R2-20-103. Communications: Time and Method

A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.

B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

C. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.

D. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.

E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.

F. If possible, the Commission shall furnish a copy of all communications electronically.

G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.

H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2).

R2-20-104. Certification as a Participating Candidate

A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-941(B), but later chooses to run as a participating candidate, shall:
1. Make the change to participating candidate status during the exploratory and qualifying periods only;
2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
3. Return all Political Action Committee (PAC) monies received;
4. Not have made expenditures exceeding the early contribution limit, or have spent any part of a contribution exceeding the early contribution limit;
5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
6. Return all contributions received from another candidate's candidate committee.

B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), and shall contain contributions received from individuals only;
2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(24); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
3. Remitting the money to the Fund;

or

4. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.

C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date. In the application, a candidate shall certify under oath that the candidate:

1. Agrees to use all Clean Elections funding for direct campaign purposes only;
2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;
3. Will comply with all requirements of the Act and Commission rules;
4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
8. Will submit the name and mailing address of the person who is entitled to receive primary and general election funding on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and
11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.

D. If certified as a participating candidate, the candidate shall:

1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
2. Not accept any private contributions, other than early contributions and a limited number of $5 qualifying contributions;
3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
5. Attend a Commission sponsored candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified before the beginning of the qualifying period. If the candidate is unable to attend a training class, the candidate shall:
   a. Notify the Commission that the candidate is unable to attend a training class. The Commission then will send that person the Commission training materials; and
   b. The candidate shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
6. Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.

E. Loans. A participating candidate may accept an individual contribution as a loan or may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the contribution received or personal funds and loans shall not exceed the expenditure limits set forth in A.R.S. § 16-941(A)(1) and (2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a financial institution or bank, to a candidate used for the purpose of influencing that candidate's election shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).

F. A participating candidate may raise early contributions for election to one office and choose to run for election to another office.

G. Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 2, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1420, effective April 30, 2010 (Supp. 09-3). Subsection R2-20-104(C)(8) amended by exempt rulemaking at 19 A.A.R. 1685, effective October 6, 2011; Subsection R2-20-104(D)(5) amended by exempt rulemaking at 19 A.A.R. 1685, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 115, effective December 15, 2016 (Supp. 16-4).

R2-20-105. Certification for Funding

A. After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.

B. A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees must be paid for from the candidate's early contributions or personal monies. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.

C. A candidate may accept electronic $5 qualifying contributions for the elected office sought by the candidate. The Secretary of State's secured internet portal must be used to collect electronic $5 qualifying. A $5 contribution must accompany every $5 qualifying contribution form and must be submitted via the Secretary of State's portal using a private electronic payment service, specified by the Secretary of State's Office, bank account, credit or debit card. A non-refundable transaction fee may be assessed on electronic $5 qualifying contribution transactions. The transaction fee is not a contribution to the candidate's campaign and is paid by the contributor. If excess funds are accumulated by the candidate's campaign based on the transaction fee then all excess funds must be given to the Commission and must be entered into the candidate's campaign finance report in a manner that indicates the transaction fees have been accumulated and transferred.

D. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the $5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. If a contribution is received unsolicited, the candidate or contributor may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. Nothing in this rule shall prohibit the use of direct mail or the internet to obtain qualifying contributions as long as an original signature is provided on the qualifying contribution form. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. For qualifying contributions received in accordance with subsection (C) of this Section, the residential address and signature of the solicitor is not required.

E. The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:

1. Unsigned by the contributor;
2. Undated; or
3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.

F. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Elections funds. A candidate who is denied Clean Elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.

G. The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the amount tendered will not be returned to a candidate if a candidate is denied Clean Elections funding.

H. In accordance with the procedure set forth at A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is less than 110 percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:

1. The candidate files at least the minimum number of additional slips needed to qualify for funding;
2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate; and
3. The period for filing qualifying contributions slips has not expired.

I. The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 30, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2). Subsection R2-20-105(C) amended by exempt rulemaking at 19 A.A.R. 1688, effective October 6, 2011; Subsection R2-20-105(J) amended by exempt rulemaking at 19 A.A.R. 1688, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 117, effective January 1, 2017 (Supp. 16-4).

R2-20-106. Distribution of Funds to Certified Candidates

A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:

1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
   a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or
   b. If the application is submitted after the current year March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
3. Determine whether the candidate is opposed in the election.

B. In making the determinations described in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.

C. The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.

D. Within seven days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.

E. Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the Fund within 10 days after such determination is made. That candidate shall make no expenditures from general election funds from the date of the canvass.

F. The Commission may refuse to distribute funds to participating candidates in cases in which the Commission finds evidence of fraud or illegal activity committed by the participating candidate.

G. Pursuant to A.R.S. § 16-953, a participating candidate shall return to the Fund:

1. All primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.
2. All general funds not committed to expenditures (1) during the general election period; and (2) for goods or services directed to the general election.

H. All funds returned to the Commission pursuant to subsection (G) of this rule, shall be returned to the Fund by a cashier's check drawn on the candidate's campaign bank account. Any fee associated with the issuance of a cashier's check shall be deemed a direct campaign expenditure and reported on the candidate's campaign finance report.

I. If a participating candidate does not account for any outstanding expenditures in the amount of the funds returned to the Commission, the participating candidate must reconcile the outstanding expenditures with personal monies. Once funds have been returned to the Commission, no further reimbursements from the Clean Elections Fund shall be permitted. Participating candidates may not exceed the primary or general election spending limits.

J. Commission staff may waive the return of funds if:

1. The Commission staff determines the amount to be returned is de minimus;
2. The Commission staff determines the cost of recovery exceeds the amount of the return;
3. The funds to be returned shall not exceed $25; and
4. The Commission is notified of any waiver of the return of funds.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by final exempt rulemaking at 24 A.A.R. 107, effective December 14, 2017 (Supp. 17-4).

R2-20-107. Candidate Debates

A. The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections. Except as set forth in the subsection below, the Commission shall not be required to sponsor a debate if there is no participating candidate in the election for a particular office.

B. In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:

1. There are more candidates appearing on the ballot than there are seats available for the political party's nomination for general election candidates, and
2. At least one of the candidates is a participating candidate.

C. The following candidates will not be invited to participate in debates as follows:

1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
2. In the general election, write-in candidates.

D. In the event that there is no participating candidate in a primary or general election but there is an election involving candidates who are not unopposed, a candidate may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).

1. A nonparticipating candidate who requests a debate pursuant to this rule shall complete and return the invitation form sent to the candidate by the Commission by the deadline identified on the form. Forms received by the Commission past the deadline may still be considered at the discretion of the Commission. Commission staff shall notify all invited candidates if a debate will be sponsored by the Commission and which candidates will participate.
2. If a candidate requests that the Commission sponsor a debate and fails or refuses to attend the debate, or a candidate agrees to participate in a debate and subsequently fails or refuses to attend the debate sponsored by the Commission, each candidate who fails or refuses to attend the debate shall reimburse the Commission for the cost of debate preparations not to exceed $10,000 for a non-participating candidate for the legislature and $25,000 for a non-participating candidate for statewide office. In the event that a candidate requests a general election debate or agrees to participate in a general election debate but does not advance to the general election, the candidate shall not be liable for the reimbursement.

E. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.

F. Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be fined $500.00. For purposes of this Section, each primary or general election shall be considered a separate election.

G. A participating candidate may request to be exempt from participating in a required debate by doing the following:

1. Submit a written request to the Commission at least one week prior to the scheduled debate, and

2. State the reasons and circumstances justifying the request for exemption.

H. After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:

1. Beyond the control of the candidate;

or

2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.

I. A participating candidate who fails to participate in a required debate may submit a request for excused absence to the Commission.

1. The candidate's request for excused absence shall:
   a. State the reason the candidate failed to participate in the debate, and
   b. State the reason the candidate failed to request an exemption in advance, and
   c. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
2. After examining the request for excused absence, the Commission may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
   a. Beyond the control of the candidate;

   or

   b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.

J. When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.

K. In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the procedures established by the Commission staff.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 1690, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 4213, effective November 21, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 21 A.A.R. 1627, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 119, effective December 15, 2016 (Supp. 16-4).

R2-20-108. Termination of Participating Candidate Status

A. A candidate may voluntarily request termination of his or her participating candidate status at any time prior to notification by the Commission that such candidate has qualified for Clean Elections funding. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action within the seven-day time period, the withdrawal is automatic.

B. A candidate's participating candidate status shall automatically terminate if:

1. The candidate fails to make such submissions to the Secretary of State as prescribed in R2-20-105(B) within seven days after the end of the qualifying period, or
2. The candidate is denied Clean Elections funding by the Secretary of State and the candidate is ineligible to make a supplemental filing with the Secretary of State in accordance with R2-20-105(G).

C. A candidate whose participating candidate status has been terminated in accordance with this Section shall be ineligible to receive Clean Elections funding for that election cycle unless he/she reapplies for certification and is in compliance with R2-20-104(A) and (C).

D. In the event that a candidate who has collected qualifying contributions decides not to seek certification as a participating candidate, the candidate shall return all qualifying contributions received from contributors who have not given written permission to use their qualify contributions as campaign contributions. Written permission may include a check box on the original $5 form that authorizes a candidate to treat the qualifying contribution as a general campaign contribution if he or she decides not to participate in the Clean Elections system. If a good faith attempt to return the funds to the contributor is unsuccessful, the contributions shall be submitted to the Fund.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 17 A.A.R. 1950, effective August 25, 2011 (Supp. 11-3).

Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.

R2-20-109. Independent Expenditure Reporting Requirements

A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if:

1. Expressly provided otherwise by another Commission rule; or
2. That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a suitable process.

B. Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
2. Any person who fails to file a timely campaign finance report pursuant to A.R.S. § 16-941(D), A.R.S. §16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B). Subsection R2-20-109(B)(4) does not apply to reports pursuant to A.R.S. §§ 16-

941(D) and 16-958 or this subsection. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. Penalties shall be assessed as follows:

a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.
b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.
c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.

3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. Penalties shall be assessed as follows:
   a. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.
   b. For an election involving a legislative candidate, the civil penalty shall be $100 per day.
   c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
   d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
   e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
4. For purposes of A.A.C. R2-20-109(B)(3):
   a. Subject to A.R.S. § 16-901(43) and notwithstanding any rule to the contrary of that section, an entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity, in any combination, in a calendar year exceeds $1,000 and is more than fifty percent (50%) of the entity's total spending during the election cycle.
      i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be
      reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
      ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
      iii. For purposes of this provision, grants to other organizations shall be treated
      as follows:
         (1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
         (2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable
         expenditure.
      iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.
      v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
         (1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
         (2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
   b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as
   defined in title 16 of Arizona Revised Statutes.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 152, effective January 29, 2010 (Supp. 10-1). Subsections R2-20-109(A), (A)(4), and (B) through (E) amended by exempt rulemaking at 19 A.A.R. 2923, effective October 6, 2011; Subsections R2-20-109(A) and (C)(2) amended by exempt rulemaking at 19 A.A.R. 2923, effective August 29, 2013; Subsection R2-20-109(C)(3) amended by exempt rulemaking at 19 A.A.R. 2923, effective January 1, 204 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 3519, effective September 27, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1329, effective May 22, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 2804, effective September 11, 2014 (Supp. 14-3). Subsection R2-20-109(D) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 29, 2015; subsection R2-20-109(F) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 30, 2015 (Supp. 15-4). Amended by exempt rulemaking at 22 A.A.R. 2892, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 121, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission adopted and unanimously voted to reenact and republish this Section that was "currently in effect" for the purpose of public notice and clarity at 24 A.A.R. 109, effective December 14, 2017 (Supp. 17-4). Amended by final rulemaking at 27 A.A.R. 1568, with an immediate effective date of September 14, 2021 (Supp. 21-3).

R2-20-110. Participating Candidate Reporting Requirements

A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:

1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
   a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
   b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and
   c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
   a. Joint expenditures must be allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
   b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
   c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
   d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
   e. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:
      i. The activity includes express advocacy of the election or defeat of more than 2 candidates;
      ii. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
      iii. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
      iv. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
      v. The timing of the material or activity in relation to the election of a second candidate;
      vi. The distribution of the material or the activity is targeted to a second candidate's electorate; or
      vii. The amount of control a second candidate has over the material or activity.
5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.

B. Timing of reporting expenditures.

1. Except as set forth in subsection (A)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
2. In the alternative to reporting in accordance with subsection (A)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
   a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
   b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
   c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

C. Reports and Refunds of Excess Monies by Participating Candidates.

1. In addition to any campaign finance report required by Chapter 6 of Title 16, Arizona Revised Statutes, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
   a. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.
   b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
      i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
      ii. If the campaign finance report shows any amount of unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.
2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign

finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited in the Fund.

a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
b. The campaign finance report for the general election shall be filed within five days after the general election day and shall reflect all activity through the general election day.

3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 19 A.A.R. 1693, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1629, effective July 23, 2015 (Supp. 15-3). Section R2-20-110 renumbered to Section R2-20-114; new Section R2-20-110 made by exempt rulemaking at 22 A.A.R. 2897, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 124, effective January 1, 2017 (Supp. 16-4).

Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.

R2-20-111. Non-participating Candidate Reporting Requirements and Contribution Limits

A. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:

B. Penalties under A.R.S. § 16-942(B):

1. For an election involving a candidate for statewide office, the civil penalty shall be $300 per day.
2. For an election involving a legislative candidate, the civil penalty shall be $100 per day.
3. The penalties in (B)(1) and (B)(2) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
4. The dollar amounts in items (B)(1) and (B)(2), and the spending limits in item (B)(3) are subject to adjustment of A.R.S. § 16-959.

C. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.

D. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

E. The twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by nonparticipating candidates.

F. Contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final exempt rulemaking at 21 A.A.R. 1631, effective July 23, 2015 (Supp. 15-3). Section R2-20-111 renumbered to R2-20-115 at 22 A.A.R. 2904; new Section R2-20-111 made by exempt rulemaking at 22 A.A.R. 2899 effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 126, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission unanimously adopted and voted to reenact and republish this Section that was "currently in effect" for the purpose of public notice and clarity, with amendments at 24 A.A.R. 111, effective December 14, 2017 (Supp. 17-4).

R2-20-112. Political Party Exceptions

The provisions of A.R.S. § 16-911(B)(4) shall apply to a candidate, whether participating or nonparticipating, who becomes a nominee as defined in A.R.S. § 16-901(38).

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by final exempt rulemaking at 23 A.A.R. 128, effective January 1, 2017 (Supp. 16-4).

R2-20-113. Candidate Statement Pamphlet

A. The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. § 16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate

who has qualified for the ballot. Statements submitted for the primary candidate statement pamphlet shall be used for the general candidate statement pamphlet unless otherwise stated by the candidate.

B. The following candidates will not be invited to submit a statement for the candidate statement pamphlet:
1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
2. In the general election: write in candidates.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 15 A.A.R. 1567, effective September 2, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1200, effective January 8, 2010 (Supp. 10-2). Repealed by exempt rulemaking at 19 A.A.R. 1694, effective October 6, 2011 (Supp. 13-2). New Section made by final exempt rulemaking at 21 A.A.R. 1633, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2118, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 335, effective February 4, 2020; amendments made to subsection (A) were originally codified in Supp. 19-3 at 25 A.A.R. 2118 (Supp. 20-1).

R2-20-114. Candidate Campaign Bank Account

A. Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.

B. A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.

C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the bank account for that prior campaign. A candidate shall not deposit debt-retirement contributions into the current election campaign bank account.

Historical Note

New Section R2-20-114 renumbered from R2-20-110 by exempt rulemaking at 22 A.A.R. 2897 and 22 A.A.R. 2902, effective January 1, 2017 (Supp. 16-3).

R2-20-115. Books and Records Requirements

A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.

B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
   a. All contributions or other monies received by or on behalf of the candidate.
   b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
   c. Cumulative totals contributed by each individual or political committee.
   d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
   e. All periodic bank statements or other statements for the candidate's campaign bank account.
   f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.

C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.

4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
   a. All papers, records, or other items sought in the public inspection request;
   b. No later than two business days after the date of the subpoena; and
   c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

Historical Note

New Section R2-20-115 renumbered from R2-20-111 by exempt rulemaking at 22 A.A.R. 2899 and 22 A.A.R. 2904, effective January 1, 2017 (Supp. 16-3).

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-201. Scope

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-202. Initiation of Compliance Matters

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-203. Complaints

A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director.

B. A complaint shall conform to the following:
   1. Provide the full name and address of the complainant; and
   2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

C. All statements made in a complaint are subject to the statutes governing perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.

D. The complaint shall conform to the following provisions:
   1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
   2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
   3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
   4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-204. Initial Complaint Processing; Notification

A. Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of R2-20-203, and, if it complies with those requirements, shall within five days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and provide each respondent a copy of the complaint.

B. If a complaint does not comply with the requirements of R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the five-day period specified in subsection (A), that no action should be taken on the basis of that complaint. A copy of the complaint shall be provided with the notification to each respondent.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by final exempt rulemaking at 21 A.A.R. 1634, effective July 23, 2015 (Supp. 15-3).

R2-20-205. Opportunity for No Action on Complaint-generated Matters

A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 5 days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 5 day period specified in subsection A.

C. The respondent's response shall be sworn to and signed in the presence of a notary public and shall be notarized. The respondent's failure to respond in accordance with subsection A within 5 days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint for purposes of the reason to believe finding pursuant to A.A.C. R2-20-206.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1636, effective July 23, 2015 (Supp. 15-3).

R2-20-206. Executive Director's Recommendation on Complaint-generated Matters

A. Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Executive Director:

1. May recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction;
2. May recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A); or
3. May close the complaint generated matter without a reason to believe recommendation from the Executive Director based upon Respondent complying with the statute or rule on which the complaint is founded and in such case shall notify the Commission.

B. Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.

C. If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.

D. The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 20 A.A.R. 1332, effective May 22, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1638, effective July 23, 2015 (Supp. 15-3).

R2-20-207. Internally Generated Matters; Referrals

A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Executive Director may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.

B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-208. Complaint Processing; Notification

A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.

B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Executive Director shall so notify both the complainant and respondent.

C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

R2-20-209. Investigation

A. The Executive Director or any other person designated by the Executive Director shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.

B. The investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section amended by final rulemaking at 26 A.A.R. 111, with a immediate effective of December 12, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 542, effective March 9, 2020; the amendments to subsections (A) and (B) were originally codified in Supp. 19-4 at 26 A.A.R. 1111 (Supp. 20-1).

R2-20-210. Written Questions Under Order

The Commission may issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions

A. The Commission may authorize its Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.

B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths.

C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-212. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-213. Motions to Quash or Modify a Subpoena

A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.

B. The Commission may deny the application, quash the subpoena or modify the subpoena.

C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

A. Upon completion of the investigation conducted pursuant to R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.

B. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.

C. Within five days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.

D. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

R2-20-215. Probable Cause to Believe Finding

A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.

B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-216. Conciliation

A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.

B. A conciliation agreement pursuant to subsection (A) of this Section is not binding upon either party unless and until it is signed by the respondent and by the Executive Director upon approval by the affirmative vote of at least three members of the Commission.

C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-217. Enforcement Proceedings

A. Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).

B. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).

C. Subsections (A) and (B) of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection (B). Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

R2-20-218. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-219. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-220. Ex Parte Communications

A. In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.

B. This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.

C. Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-221. Representation by Counsel; Notification

A. If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:

1. The name, address, and telephone number of the counsel; and
2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.

B. Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-222. Civil Penalties

A. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose a penalty not to exceed $1,000 for a participating candidate for the legislature and 5,000 for a participating candidate for statewide office.

B. If the Commission has reason to believe by a preponderance of the evidence that a person other than a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may impose a penalty not to exceed $1,000.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1697, effective May 23, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3524, effective September 27, 2013 (Supp. 13-4).

R2-20-223. Notice of Appealable Agency Action

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated and specific facts constituting the violation;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 2921, effective July 1, 2011; filed in the Office October 27, 2015 (Supp. 15-4).

R2-20-224. Request for an Administrative Hearing

A. The respondent must be file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in R2-20-223.

B. If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.

C. The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless and expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-225. Informal Settlement Conference

A. If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.

B. The Commission representative shall notify the appellant in writing that the statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-226. Administrative Hearing

A. If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.

B. If the enforcement action occurs within six months of the primary or general election, the Commission will request an expedited review of the matter

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-227. Review of Administrative Decision by Commission

A. Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.

B. If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties, a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.

C. If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-228. Judicial Review

A party may appeal a final administrative decision pursuant to A.R.S. § 12-901 et seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party' s administrative remedies.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-229. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-230. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-231. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

R2-20-301. Purpose and Applicability

A. The Commission is committed to implementing the Act in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.

B. This Article applies to all persons included within the terms "employee" and "Commissioner" of the Commission.

C. These Standards of Conduct shall be construed in accordance with any applicable laws, regulations, and agreements between the Commission and a labor organization.

D. Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-302. Definitions

The following terms apply in all Citizens Clean Elections Act matters:

1. "Commission" means the Citizens Clean Elections Commission of Arizona.
2. "Commissioner" means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
3. "Conflict of interest" means a situation in which a Commissioner's or an employee's private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
4. "Employee" means an employee or staff member of the Commission.
5. "Former employee" means one who was, and is no longer, an employee of the Commission.
6. "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.
7. "Outside employment" or "outside activity" means any work, service or other activity performed by a Commissioner or employee other than in the performance of the Commissioner's or employee's official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.
8. "Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-303. Notification to Commissioners and Employees

The Executive Director shall provide to each Commissioner and employee of the Commission, upon commencement of his or her term or employment and at least annually thereafter, a copy of this Article and such other information regarding standards of conduct as the Commission and/or applicable law may prescribe.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

R2-20-304. Interpretation and Advisory Service

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article shall consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director shall be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

R2-20-305. Reporting Suspected Violations

A. Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission's Chair or Executive Director.

B. When information available to the Commission indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-306. Disciplinary and Other Remedial Action

A. A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed by law.

B. When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive Director and the employee's supervisor shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

C. Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:

1. Changes in assigned duties;

2. Divestment by the employee of his or her conflicting interest;
3. Disqualification for particular action; or
4. Disciplinary action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-307. General Prohibited Conduct

A. A Commissioner or employee shall avoid any action whether or not specifically prohibited by this Section that might result in, or create the appearance of:
1. Using public office for unlawful private gain;
2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
3. Impeding Commission efficiency or economy;
4. Losing impartiality.
5. Making a Commission decision without Commission approval; or
6. Adversely affecting the confidence of the public in the integrity of the Commission.

B. A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
2. Conducts operations or activities that are regulated or examined by the Commission; or
3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.

C. Subsection (B) of this Section shall not apply in the following circumstances:
1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.

D. A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as birthday, holiday, marriage, illness, or retirement.

E. This Section does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this Section does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-308. Outside Employment or Activities

A. A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.

B. Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:
1. Outside employment or other activities that involve illegal activities;
2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;
3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
4. Outside employment or other activities that might bring discredit upon the state or Commission;
5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;
9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However, written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

C. Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.

D. Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners and employees shall not, either with or without compensation, engage in teaching or writing that is dependent

on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

E. This Section does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service, or civic organization.

F. An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing, or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-309. Financial Interests

A. Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.

B. Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.

C. Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the outcome of the proceeding.

D. This Section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-310. Political and Organization Activity

A. Due to the Commission's role in the political process, the following restrictions on political activities are required:

1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party, or political committee subject to the jurisdiction of the Commission; and
3. Commissioners and employees not shall display partisan buttons, badges, or other insignia on Commission premises.

B. Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this Section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.

C. A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-311. Membership in Associations

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-312. Use of State Property

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 4. AUDITS

R2-20-401. Purpose and Scope

This article prescribes procedures for conducting examinations and audits of participating candidates' campaign finances.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

Amended by exempt rulemaking at 19 A.A.R. 1699, effective October 6, 2011 (Supp. 13-2).

R2-20-402. General

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-402.01. Audits of Participating Legislative Candidates

To ensure compliance with the Act and Commission rules, the Commission shall conduct audits of all participating legislative candidates after each election. Candidates who win their primary election will not be subject to an audit until after the general election. Audits shall include the review of campaign finance reports for the entire election cycle and related documentation in accordance with procedures established by the Commission. The Commission may hire independent accounting firms to carry out the audits.

Historical Note

New Section made by exempt rulemaking at 13 A.A.R. 3529, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1700, effective October 6, 2011 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1640, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 130, effective December 15, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 2944, effective September 28, 2017 (Supp. 17-4).

R2-20-402.02. Audits of Participating Statewide Candidates

All participating statewide candidates shall be audited after each primary election period and each general election period.

Historical Note

New Section made by final exempt rulemaking at 23 A.A.R. 131, effective December 15, 2016 (Supp. 16-4).

R2-20-403. Conduct of Fieldwork

A. The Commission will provide the candidate two days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the additional or updated information no later than two days after service of the Commission's request.

B. On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.

C. If the candidate fails to provide adequate office space, personnel or records, the Commission may seek judicial intervention to enforce the request or assess other penalties.

D. If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-404. Preliminary Audit Report

A. After the completion of fieldwork, the auditors may prepare a written preliminary audit report, which will be provided to the candidate after it is reviewed by the Executive Director. The preliminary audit report may include:

1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules,
2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate, and
3. Preliminary findings.

B. The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.

C. If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2).

R2-20-405. Final Audit Report

A. Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with R2-20-404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.

B. The final audit report may identify issues that warrant referral for possible enforcement proceedings.

C. Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by

the Commission in the normal course of carrying out its responsibilities. The procedures set forth in R2-20-404 and subsections (A) and (B) will be followed in preparing such addenda.

Historical Note
New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-406. Release of Audit Report

A. The Commission will consider the final audit report specified in R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.

B. Following Commission approval of the final audit report, the report will be forwarded to the candidate within five days after the public meeting.

Historical Note
New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

ARTICLE 5. RULEMAKING

R2-20-501. Purpose and Scope

This Article prescribes the procedures for the submission, consideration, and disposition of rulemaking petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-502. Procedural Requirements

A. Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.

B. The petition shall:

1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
3. Identify the specific Section of the regulations to be affected;
4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
5. Be addressed and submitted to the Commission.

C. The petition may include draft regulatory language that would effectuate the petitioner's proposal.

D. The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection (B) of this Section as a basis for rulemaking addressing issues raised in a petition.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-503. Processing of Petitions

A. Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rulemaking proceeding should be initiated, the Commission may publish a Notice of Availability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.

B. If the Commission decides a public hearing on the petition would help determine whether to commence a rulemaking proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.

C. The Commission will consider all comments regarding whether rulemaking proceedings should be initiated.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-504. Disposition of Petitions

A. After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate rulemaking based on the filed petition.

B. If the Commission decides to initiate rulemaking proceedings, it shall file a Notice of Proposed Rulemaking and the pro-posed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in the Arizona Administrative Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.

C. If the Commission decides not to initiate rulemaking, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-505. Commission Considerations

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations:

1. The Commission's statutory authority;
2. Policy considerations;
3. The desirability of proceeding on a case-by-case basis;
4. The necessity or desirability of statutory revision;
5. Available agency resources; and

6. Substantive policy statements.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-506. Administrative Record

A. The Commission record for the petition process consists of the following:
1. The petition, including all attachments on which it relies, filed by the petitioner;
2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;
4. All notices published on the Commission web site and in the Arizona Administrative Register, including the Notice of Availability and Notice of Disposition;
5. The transcripts or audiotapes of any public hearing on the petition;
6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.

B. The administrative record specified in subsection (A) of this Section is the exclusive record for the Commission's decision.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 6. EX PARTE COMMUNICATIONS

R2-20-601. Purpose and Scope

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at R2-20-220.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-602. Definitions

A. "Ex parte communication" means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
1. Any ongoing audit;
2. Any pending investigation; or
3. Any litigation matter.

B. "Ex parte communication" does not include the following communications:
1. Public statements by any person in a public forum; or
2. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-603. Audits, Investigations, and Litigation

A. In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or any other decision concerning an investigation or litigation matter.

B. A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection (A) of this Section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication, and deliver the statement to the Executive Director for placement in the applicable case file.

C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection (A) of this Section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-604. Sanctions

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

Historical Note
New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-701. Purpose and Scope

Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the

outcome of a candidate election, nor make any payment directly or indirectly to a political party; and subject to the foregoing, may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final rulemaking at 26 A.A.R. 886, with an immediate effective date of February 27, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1259, with an immediate effective date of June 4, 2020 (Supp. 20-2).

R2-20-702. Use of Campaign Funds

A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).

B. Participating candidates may purchase fixed assets with a value not to exceed $800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of $200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at $200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80 percent of the original purchase price including the cost of accessories.

C. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The sum of early contributions received plus public funds disbursed through the primary election period; less
2. All other expenditures made during and for the exploratory, qualifying and primary election periods.

D. During the general election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The amount of public funds disbursed during and for the general election period; less
2. All other expenditures made during and for the general election period.

E. Transportation expenses.
1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
   a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
   b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
3. Use of airplanes.
   a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of $150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to $150 per hour of flying time.
   b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 17 A.A.R. 1267, effective April 12, 2011 (Supp. 11-2). Since language in subsections R2-20-702(C)(3)(d)(i) and (ii) and R2-20-702(C)(4) and (5) are substantively identical, the Commission requested to remove the redundant language in R2-20-702(C)(3)(d)(i) and (ii) under A.R.S. § 41-1011(C), Office File No. M11-345, filed October 3, 2011 (Supp. 11-2). Amended by exempt rulemaking at 19 A.A.R. 1702, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 22 A.A.R. 2906, effective January 1, 2017 (Supp. 16-3). Amended by exempt rulemaking at 23 A.A.R. 2342, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2120, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 309, with an immediate effective date of January 23, 2020 (Supp. 20-1). Amended by final rulemaking at 26 A.A.R. 1132, with an immediate effective date of May 11, 2020 (Supp. 20-2).

R2-20-702.01. Use of Assets

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the

outcome of a candidate election, nor make any payment directly or indirectly to a political party.

Historical Note

New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final rulemaking at 26 A.A.R. 887, with an immediate effective date of March 9, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1261, with an immediate effective date of June 4, 2020 (Supp. 20-2).

R2-20-703. Documentation for Direct Campaign Expenditures

A. In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:

1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded $200 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.

B. Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.

C. Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by final exempt rulemaking at 21 A.A.R. 1641, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 133, effective January 1, 2017 (Supp. 16-4).

R2-20-703.01. Campaign Consultants

A. For purposes of this rule "Campaign Consultant" means any person paid by a participating candidate's campaign or who provides services that are ordinarily charged to a person, except services provided for in A.R.S. § 16-911(6)(b).

B. A participating candidate may engage campaign consultants.

C. A participating candidate may only advance a campaign consultant for services such as consulting, communications, field employees, canvassers, mailers, auto-dialers, telephone town halls, electronic communications and other advertising purchases and other campaign service if an itemized invoice identifying the value of the services is provided directly to that particular candidate at the time of the advance payment.

1. Providing payment for such services as described in subsection (C) of this rule in the absence of an itemized invoice or advance payment for such services shall be deemed not to be a direct campaign expenditure.
2. A participating candidate may advance payment for postage upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of postage.
3. A participating candidate may advance payment for advertising that customarily requires pre-payment upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of the advertisement.

D. The Commission shall be included in the mail batch for all mailers and invitations. The Commission shall also be provided with documentation from the mail house, printer or other original source, showing the number of mailers printed and the number of households to which a mailer was sent. Failure to provide this information within 7 days after the mailer has been mailed may be considered as evidence the mailer was not for direct campaign purposes.

E. Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party.

Historical Note

New Section made by exempt rulemaking at 23 A.A.R 2344, effective July 20, 2017 (Supp. 17-3). Amended by final rulemaking at 26 A.A.R. 889, with an immediate effective date of March 16, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1263, with an immediate effective date of June 4, 2020 (Supp. 20-2).

R2-20-704. Repayment

A. In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.

1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible.
3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's current election campaign account, and any additional funds raised subject to the limitations and prohibitions of the Act.

5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.

B. The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:

1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any federal, state or local taxes on such income.
6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.

C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:

1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.

D. Repayment period.

1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.
3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this Section. The amount of interest due shall be the greater of:
   a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
   b. The amount actually earned on the funds set aside or to be repaid under this Section.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1643, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2122, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 337, effective February 4, 2020; the amendment to subsection (A)(2) was originally codified in Supp. 19-3 at 25 A.A.R. 2020 (Supp. 20-1).

R2-20-705. Additional Audits or Repayment Determinations

A. The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

B. The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-706. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-707. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-708. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-709. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-710. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

16-948. Controls on participating candidates' campaign accounts

(Caution: 1998 Prop. 105 applies)

A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under section 16-945 or 16-946.

B. A candidate may designate other persons with authority to withdraw monies from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

C. The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1.4 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. The following payments made directly or indirectly from a participating candidate's campaign account are unlawful contributions:

1. A payment made to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election.

2. A payment made directly or indirectly to a political party.

D. Notwithstanding subsection C of this section, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.

E. Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

F. A participating candidate shall not use clean elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity that is owned by that participating candidate or in which the candidate has a controlling interest. The use of goods or services that are prohibited by this subsection is deemed to be an unlawful in-kind contribution to the participating candidate.

16-956. Voter education and enforcement duties

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days

after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

(no subject)

1 message

Earl Taylor <etaylor1787@gmail.com> Sun, Apr 2, 2023 at 5:34 PM
To: grrc@azdoa.gov

Please vote NO on any effeort to change Elections Commission rules to allow the outsourcing of their investigative powers to third party groups!”

Gmail

GRRC - ADOA <grrc@azdoa.gov>

(no subject)

1 message

Michael Carrie <mcarrie272@gmail.com> Mon, Apr 3, 2023 at 9:13 AM
To: grrc@azdoa.gov

Please vote no to any rules package that allows Clean Elections to outsource any investigative powers to a third party.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

(no subject)

1 message

Julie Wilson <jewelwilson51@gmail.com> Mon, Apr 3, 2023 at 9:43 AM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!
Thank you,
Julie wilson

Gmail

GRRC - ADOA <grrc@azdoa.gov>

(no subject)

Jan Maul <janmaul25@gmail.com> Sun, Apr 2, 2023 at 4:17 PM
To: grrc@azdoa.gov

Vote no on outsourcing our clean emission acts to 3rd parties

Gmail

GRRC - ADOA <grrc@azdoa.gov>

3rd Party

1 message

Terry Chick <terrydmca@gmail.com> Mon, Apr 3, 2023 at 11:12 AM
To: grrc@azdoa.gov

The Clean Election Commission, the state agency that is in charge of overseeing and enforcing the Prop 211 donor disclosure initiative, has submitted their proposed rule package to the Governor's Regulatory Review Commission to implement the law. In the rule package they are proposing to give investigative subpoena powers to 3rd party entities! This would empower liberals like attorney Marc Elias and other lefty groups to conduct fishing expeditions against conservative religious institutions, charitable organizations and other non-profits that they think are engaging in election activities!

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Absurdity!

April Smith <sasmithfam@gmail.com> Sun, Apr 2, 2023 at 4:25 PM
To: grrc@azdoa.gov

Hello,

I am emailing regarding the very absurd practice of giving away investigative powers to third party groups. Please vote NO on any rule package of outsourcing the investigative powers. We need to stop weaponizing agencies to attack groups that are not doing anything wrong.

Thank you, I trust you will all do the right thing and not allow this practice.

April Smith

Gmail

GRRC - ADOA <grrc@azdoa.gov>

CEC

1 message

Lynda B. <lbredo@yahoo.com> Sun, Apr 2, 2023 at 8:20 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on package that allows Clean Elections Comm to outsource inverstgative powers to 3rd party.,
Thank you ,
LB

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Election

1 message

Laura Stockslager <lstockslager@cox.net> Mon, Apr 3, 2023 at 7:44 AM
To: grrc@azdoa.gov

Dear Clean Elections Commission, I am writing to urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. We need non-partisan solutions and restored trust in our elections. Please do what is best for all of your constituents. Thank you for your time and consideration.

Take care,

Laura J. Stockslager

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Election Commisdions

1 message

Joan Dzuro <jdzuro@msn.com> Sun, Apr 2, 2023 at 5:47 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote no on any rule that allows 3rd party entities to interfere in our elections. Arizona can take care of having free and fair elections without outside entities interfering.

Thank you.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Election Commission

1 message

Warren Woodward <w6345789@yahoo.com> Sun, Apr 2, 2023 at 7:32 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Sincerely,

Warren Woodward
Sedona

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Election Commission

1 message

James Jensen <jim30jen@yahoo.com> Sun, Apr 2, 2023 at 5:11 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any proposed rules package that outsources investigative powers to third party groups.

Thank you.

James Jensen
2068 Leisure World
Mesa, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean election commission.

1 message

Pam Parrish <nursepam.74@comcast.net> Sun, Apr 2, 2023 at 9:26 PM
To: grrc@azdoa.gov

Please vote NO Pam Parrish.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean election

1 message

JuliePeden <JuliePeden@protonmail.com> Sun, Apr 2, 2023 at 6:13 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I vote No.
Sent with Proton Mail secure email.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections

1 message

Paul Tuemmler <tmmlrpl@yahoo.com> Mon, Apr 3, 2023 at 10:27 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please, please don't outsource our election process to any 3rd party resource.

Thanks.

Paul Tuemmler
Scottsdale, AZ
602-363-2216

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean elections

1 message

Ben Garza <realconceptsllc@gmail.com> Mon, Apr 3, 2023 at 1:03 PM
To: grrc@azdoa.gov

Hello as a 20 year resident of Maricopa county I urge you to vote no to not allow any 3rd party to conduct investigations. We as the citizens see what has been going on these past years. We have seen the intentional managed rapid decline of our economy..our elections..and in general our country.
Thank you
Ben Garza
723 West Ingram street
Mesa AZ 85201

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commision

1 message

Merl Nielsen <mn1020@aol.com> Mon, Apr 3, 2023 at 9:56 AM
Reply-To: Merl Nielsen <mn1020@aol.com>
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I strongly urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!
Sent from AOL on Android

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission — Rules Package

1 message

Ken Fidyk <fidyk@verizon.net> Sun, Apr 2, 2023 at 4:38 PM
To: grrc@azdoa.gov

We urgently request that you to vote NO on any rules package that allows the Clean Elections Commission to outsource their investigative powers to third parties. Thank you.

Respectfully,
Ken Fidyk

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean elections Commission

1 message

jbevansaz@npgcable.com <jbevansaz@npgcable.com> Sun, Apr 2, 2023 at 4:52 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!”

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

James Slager <jamesslager@gmail.com> Sun, Apr 2, 2023 at 4:55 PM
To: grrc@azdoa.gov

Vote NO on allowing them to outsource investigation’s to third parties !

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean elections commission

1 message

Lassells1 <lassells1@aol.com> Sun, Apr 2, 2023 at 5:26 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. We must ensure integrity.

Thank you. Scott Lassell

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

plaloba@cox.net <plaloba@cox.net> Sun, Apr 2, 2023 at 5:53 PM
Reply-To: plaloba@cox.net
To: grrc@azdoa.gov

To Whom It May Concern,

The Clean Election Commission, the state agency that is in charge of overseeing and enforcing the Prop 211 donor disclosure initiative, has submitted their proposed rule package to the Governor's Regulatory Review Commission to implement the law. In the rule package they are proposing to give investigative subpoena powers to 3rd party entities! This would empower liberals like attorney Marc Elias and other lefty groups to conduct fishing expeditions against conservative religious institutions, charitable organizations and other non-profits that they think are engaging in election activities!

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!"

Thank you,

Patricia Rosner

9610 W Alice Ave

Peoria AZ 85345

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

Diane Piantek <dpiantek@yahoo.com> Sun, Apr 2, 2023 at 8:35 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Regards,

Diane Piantek
Sent from my iPad

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

Paul Marriott <skibears1@gmail.com> Sun, Apr 2, 2023 at 8:44 PM
To: grrc@azdoa.gov

Dear GRRC,
Please vote no on any package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. Please do not allow third parties to have investigative subpoena powers.

Thank you,
Jennifer Marriott

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

Carol Griffith <cgriffith1056@gmail.com> Sun, Apr 2, 2023 at 11:15 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

BJ Jensen <bjensenusa@yahoo.com> Mon, Apr 3, 2023 at 6:30 AM
Reply-To: BJ Jensen <bjensenusa@yahoo.com>
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third-party groups.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

Susan Sigl <susansigl@yahoo.com> Mon, Apr 3, 2023 at 11:30 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.
Giving investigative subpoena powers to 3rd parties which is proposed in the rule package to the Governor's Regulatory Review Commission is outside the bounds of American democracy and our state's rightful delegation of subpoena power to a state agency.
Susan Sigl
Mayberry PC

Gmail

GRRC - ADOA <grrc@azdoa.gov>

clean elections commission

1 message

Marianne Compton <hellocomptons@sbcglobal.net> Mon, Apr 3, 2023 at 12:45 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I am writing this email to urge the Arizona Clean Election Commission to vote NO on any any rule package to outsource
investigative powers to any third party group!!!
I am a registered legal voter in the state of Arizona and keep of of legislative activities in the state of Arizona.

Marianne Compton

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission Investigative Powers

1 message

onlyaudio <onlyaudio@pm.me> Sun, Apr 2, 2023 at 4:36 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on ANY rule package that permits the CEC to outsource their confidential investigative powers to third parties or groups.

To do so would be absurd, tantamount to eliminating "CLEAN" from the Clean Elections Commission, very likely unconstitutional and, certainly, anti-legal Arizona citizens.

Thank you.

Richard Freeze
Show Low

Sent with Proton Mail secure email.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission Powers

1 message

Rachel Bauer <rbauer18@cox.net> Sun, Apr 2, 2023 at 5:16 PM
Reply-To: rbauer18@cox.net
To: grrc@azdoa.gov

Dear Commission,

I respectfully urge the Governor's Regulatory Review Commission to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. I am concerned that delegation of powers by a state agency would be unconstitutional. Please use wisdom in approving rules that would affect the rights of ordinary Arizona citizens. Please follow the Constitution.

Thank you,

Rachel Bauer

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission Rule package (prop 211)

1 message

Lisa Floyd <lfloyd999@gmail.com> Sun, Apr 2, 2023 at 4:55 PM
To: grrc@azdoa.gov

To whom it may concern,

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!”

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Thank you,
Lisa Floyd
Concerned Arizonan

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Commission

1 message

Anne Rankin <volcanic@cox.net> Sun, Apr 2, 2023 at 4:34 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Thank you,
Anne Rankin
Phoenix, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean elections committee

1 message

Suzanne Murray <suzannemurray377@gmail.com> Sun, Apr 2, 2023 at 9:43 PM
To: grrc@azdoa.gov

Please do not let the Clean Elections committee outsource ANYTHING to a third party.

Sincerely,

Suzanne Murray
1860 W Rockrose Way
Chandler, AZ. 85248

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Committee Prop 211

1 message

K Cam <kcameron6655@gmail.com> Sun, Apr 2, 2023 at 4:32 PM
To: grrc@azdoa.gov

Giving subpoena power to anyone is a serious consideration, and it appears this is currently being taken lightly in the Clean Elections Commission rule package. There should be a high bar, but it appears almost no qualifications need to be met in the current recommendations.

I strongly urge a NO vote on any rule package that allows the Clean Elections Commission to give investigative powers to third parties or groups.

Karen Cameron
Cell: 480.980.6655
Email: KCameron6655@gmail.com

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Committee

Jan Majeske <jan.majeske@yahoo.com> Sun, Apr 2, 2023 at 4:19 PM
To: grrc@azdoa.gov

Please vote NO on any rule package allowing Clean Elections Committee to outsource their investigative powers to 3rd party groups! Thank you! Jan, Scottsdale resident & taxpayer

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections investigations

1 message

Susan <sleeper499@protonmail.com> Sun, Apr 2, 2023 at 6:20 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Susan Leeper
Scottsdale, AZ

Sent with Proton Mail secure email.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

clean elections outsourceing

1 message

bill <billedge38@gmail.com> Mon, Apr 3, 2023 at 7:10 AM
To: grrc@azdoa.gov

As a PC I encourage you to vote NO for this bill. It is an atrocity to have a 3rd party tell us how to run our state. If you elected representatives cannot make a decision that favors the people then you need to be voted out. We have too much being decided by 3rd party.

William Edge

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections Proposal Review

1 message

Brian Eckley <brianjeckley@gmail.com> Mon, Apr 3, 2023 at 8:30 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

To whom it may concern:

I am asking that you vote NO on any rule package from the Clean Elections Committee that would give third party entities investigative subpoena power. This should not be delegated to anyone outside of the commission. They have been doing it and there is no reason now to give that power to someone else.

Regards,
Brian Eckley
Concerned AZ, Maricopa County voter

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean elections rule

1 message

Janet Patrick <dickp44406@aol.com> Mon, Apr 3, 2023 at 10:29 AM
To: grrc@azdoa.gov

Do not allow 3rd party entities to have investigative subpoena powers!
It's bad enough that unelected commissioners write rules to govern our behavior; but to empower even more actors beyond the commission with power to subpoena fellow citizens in fishing expeditions is outrageous.
Janet Patrick
LD10

Sent from my iPad

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections

1 message

Karen Trisko <karentrisko@gmail.com> Mon, Apr 3, 2023 at 7:27 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please don’t allow outsourcing of official duties!

Karen Trisko

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Do not allow 3rd parties supeano power

1 message

Patricia Gillenwater <psp.pgillenw@gmail.com> Mon, Apr 3, 2023 at 12:26 PM
To: grrc@azdoa.gov

Delegating for political war games unconstitutional. Keep Clean Elections "clean".

I believe the water won't clear until you get the pigs out of the creek. Senator John Kennedy, LA

Patricia "Pat" Gillenwater PC / SC

Proud to be a Constitutional Conservative for a Constitutional Republic

100 % Trumplican

“Once a government is committed to the principle of silencing the voice of opposition, it has only one way to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear.” — President Harry S. Truman

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Do NOT Outsource Your Investigative Powers to 3rd Parties

1 message

Kristin Baumgartner <kristinb77@gmail.com> Mon, Apr 3, 2023 at 6:51 AM
To: grrc@azdoa.gov

Dear Commissioners,

I support transparency in our elections. Steps have been taken at the county and state level by enacting laws and regulations. I do not support giving investigative subpoena powers to third parties. The intent of Prop 211 is not to create more witch hunts. These powers should be reserved for state judicial and regulatory groups for bonafide investigations.

Please do not outsource your investigative powers.

Thank you.

Kristin

--

Kristin Baumgartner
Precinct Committeemen Captain
Yavapai County
Prescott, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Don’t outsource to 3rd parties

1 message

KATHLEEN WILKINS <wlskew@aol.com> Sun, Apr 2, 2023 at 6:32 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Sincerely
Kwilkins

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Giving Subpoena Powers to outside scources

1 message

John J Cox III <the.old.coastie.5561@gmail.com> Sun, Apr 2, 2023 at 6:02 PM
To: grrc@azdoa.gov

Ladies and Gentlemen,
This is the dumbest idea of any Government Oversight Committee yet.
As young US Coast Guardsman (I am now 85 years old),
I had the distinct displeasure of visiting Haiti when Papa Doc Duvalier was President for Life.
It was an open cesspool of corruption, fear and poverty.
I also visited Havana, Cuba TWICE....once in 1956 when Juan Fulgencia Battista was dictator. It was corrupt,
but there was at least some semblance of livability primarily due to the tourist and agricultural export industries.
Three years later I returned when Fidel Castro had taken over with ABSOLUTE POWER. I cried. It was already just like Haiti.
Poverty and Fear everywhere.
I also visited Kingston, Jamaica just after they gained Independence from Great Britain.
And then there was Panama.....but you get the idea.
Turning subpoena power over to an "Independent Outsider" is giving a loaded gun to a Political Opponent.
Witch Hunts. Harassment. INSANITY!
There is already enough INSANITY in what was a well run state when I arrived here to live fulltime in September of 1981.....42 years ago.
We don't need YOUR COMMITTEE adding more.
Respectfully,
John J. Cox III
Mesa, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Governors Regulatory Review Commission

Paula Burkhalter <paula.burkhalter@gmail.com> Sun, Apr 2, 2023 at 4:22 PM
To: grrc@azdoa.gov

CLEAN UP OUR ELECTIONS ! Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups! This is outrageous and leads to more skepticism in our election process!

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Granting subpoena power to outside counsel/parties/groups

1 message

John Davis <jadscottsdale@cox.net> Mon, Apr 3, 2023 at 7:10 AM
To: grrc@azdoa.gov

Please VOTE NO!
Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

GRRC

1 message

Sandy Walter <sandy.walter0202@gmail.com> Mon, Apr 3, 2023 at 7:15 AM
To: grrc@azdoa.gov

Please Vote No on GRCC

Gmail

GRRC - ADOA <grrc@azdoa.gov>

I oppose the current Proposition 211 proposal

1 message

Henry Bowman <bowman@wickenburg.us> Sun, Apr 2, 2023 at 5:23 PM
To: grrc@azdoa.gov

I object to any Proposition 211 proposal that empowers unelected third-party organizations to conduct official investigations and issue subpoenas to Arizona entities.

Our state constitution is explicit about the authority of the three branches, and that none of them can usurp the powers granted to any of the others. Likewise, unelected private entities should not usurp the powers granted to any of those branches.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Investigative Powers

1 message

Joe Farmer <jfarmer534@gmail.com> Sun, Apr 2, 2023 at 9:24 PM
To: grrc@azdoa.gov

I strongly, urgently encourage you to vote "NO" on any package that would permit the use of outside third parties to conduct investigations on behalf of this entity. Any such investigations should be conducted honestly and fairly without being driven by any outside entity's political affiliation or other potentially biased position.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Investigative powers

1 message

Joe Hopf <joemama4@cox.net> Sun, Apr 2, 2023 at 4:38 PM
To: grrc@azdoa.gov

Please vote no on any rules pkg. that allow Clean Election Commission to outsource investigative powers to 3rd-party groups.
Respectively
Joe Hopf
Mesa

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Investigative subpoena powers to 3rd party entities-Clean Election Commission.

1 message

Nan Nicoll <dustydesertgal@gmail.com> Mon, Apr 3, 2023 at 8:18 AM
To: grrc@azdoa.gov

The proposed Rules Package submitted by the Clean Election Commission calls for an outrageous and unlikely unconstitutional delegation of subpoena power to
a state agency.

This is a definite "No"! This would allow harassment by leftist groups against conservative religious organizations, charities and other non-profits.

Nan Nicoll
4096 S Cassidy Ct.
Fort Mohave, AZ 86426

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Keep your regulatory powers

1 message

roger.gorres@yahoo.com <roger.gorres@yahoo.com> Sun, Apr 2, 2023 at 7:33 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

As a citizen of Arizona, I urge you to vote NO on any rule package that allows you to outsource investigative powers to third party groups!

This is derelection of your duty.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

NO 3RD PARTIES

1 message

Jerri D <jerri.dngldn@gmail.com> Mon, Apr 3, 2023 at 9:11 AM
To: grrc@azdoa.gov

vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!”

Shalom,
Jerri Dingledine
jerri.dngldn@gmail.com
919-600-0007
Follower of Jesus Christ
Constitutional Patriot

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No 3rd party involvement in Elections

1 message

Dorie Duff <dorieduff@protonmail.com> Mon, Apr 3, 2023 at 2:28 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

There is nothing "clean" about allowing 3rd party "investigations" to (further) mess with our already tenuous voting system in Arizona. Please do not accept any rules that include this idea.

Thank you.
Dorie Duff

Gmail

GRRC - ADOA <grrc@azdoa.gov>

NO on any rule package that allows the CEC to outsource to third party groups.

1 message

Andrea Kadar <andreakadar7@yahoo.com> Mon, Apr 3, 2023 at 9:48 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Ladies and gentlemen:

Please vote NO on any rule(s) package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.
thank you.

Sincerely,
Andrea Kadar
Sedona

Gmail

GRRC - ADOA <grrc@azdoa.gov>

NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

1 message

Cheryl Little <cleelittle@gmail.com> Sun, Apr 2, 2023 at 7:56 PM
To: grrc@azdoa.gov

The Clean Election Commission, the state agency that is in charge of overseeing and enforcing the Prop 211 donor disclosure initiative, has submitted their proposed rule package to the Governor's Regulatory Review Commission to implement the law. In the rule package they are proposing to give investigative subpoena powers to 3rd party entities! This would empower liberals like attorney Marc Elias and other lefty groups to conduct fishing expeditions against conservative religious institutions, charitable organizations and other non-profits that they think are engaging in election activities!

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency. You must vote no against this outrageous violation of the law.

Thank you

Cheryl Little

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No on CEC Rules Proposal

1 message

HC T <hcten@msn.com> Sun, Apr 2, 2023 at 9:08 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

From what I understand the Clean Elections Commission has submitted a proposed rule package that includes the ability to give subpoena power to third party intities. I urge you to vote no on the proposed rules. The Clean Elections Commision should not be allowed to give investigative powers to a third party.

Thank you for your time.

Chris Tennant
928-750-0284

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No on Clean Election Commission - Prop 211

1 message

REMAviation <REMAviation@proton.me> Mon, Apr 3, 2023 at 7:48 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Dear Gov. Regulatory Review Commission,

Do not support any upcoming packages from the Clean Election Commission that would give subpoena powers to third party entities. We cannot allow another agency to be weaponized against the people of Arizona, particularly to Conservatives. Once you allow to happen, then it can be used against anyone, including Democrats. You don't want to open the flood gates to this abuse of power!

Vote "NO" on this rules package!

Thank you,
Roy Morales

Sent with Proton Mail secure email.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No Outsourcing of Investigative Powers

1 message

scrmntbeth@aol.com <scrmntbeth@aol.com> Sun, Apr 2, 2023 at 4:59 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

To Whom It May Concern:

I respectfully urge you to to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Sincerely,

Beth King

Chandler AZ voter

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No to outsourcing power

1 message

Malgosia Filomena Bardzik <malgosiabc@hotmail.com> Sun, Apr 2, 2023 at 5:40 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Third party groups are for profit and will carry about those who pays them the most, they are biased.

Thank you
Margaret Cox

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No to the delegation of subpoena powers to any 3rd Parties

1 message

kalltu26v <kalltu26v@protonmail.com> Sun, Apr 2, 2023 at 5:10 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

To the Governor's Regulatory Review Commission:

The Clean Election Commission, the state agency that is in charge of overseeing and enforcing the Prop 211 donor disclosure initiative, has submitted their proposed rule package to this Commission to implement the law.

In the rule package they are proposing to give investigative subpoena powers to 3rd party entities! This would empower inappropriate groups and/or individuals the ability to conduct investigations lacking "probable cause" against conservative religious institutions, charitable organizations and other non-profits that they think are engaging in election activities!

This is unacceptable. It is not in line with our state Constitution, and is a violation of privacy. Arizonans did not give subpoena powers to 3rd party entities. The subpoena parties have been delegated to the Clean Election Commission. The Clean Election Commission needs to do the duties that have been assigned to it. Delegaton of subpoena powers in not correct; absolutely not acceptable.

I urge the Governor's Regulatory Review Commission to vote **NO** on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!"

Thank you, kyrna ball, eloy, arizona.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No!

1 message

Penny Pease <pennycpease@gmail.com> Sun, Apr 2, 2023 at 8:13 PM
To: grrc@azdoa.gov

We do not agree with outsourcing investigate groups. Vote No. 👎

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No, No, No

1 message

Julie <travelerstread@gmail.com> Sun, Apr 2, 2023 at 5:28 PM
Reply-To: Julie <travelerstread@gmail.com>
To: grrc@azdoa.gov

Please vote No on the proposed rule package to the Governor's Regulatory Review Commission to implement the law. In the rule package they are proposing to give investigative subpoena powers to 3rd party entities!

Julia Brown
83 year old Veteran
Radioman E2
USN 1959-1963

Yuma, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

No

1 message

Deb Scott <dlucs1@yahoo.com> Mon, Apr 3, 2023 at 6:04 AM
To: grrc@azdoa.gov

We urge you to vote no on any rules package of the clean elections commission that would be outsourced to third parties.
Thank you,
Debra Scott

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

outsourcing investigating powers to outside groups.

1 message

A B BLAIR <bondservant7@msn.com> Mon, Apr 3, 2023 at 10:47 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

PLEASE PLEASE PLEASEb vote no on this recommendation.

A B Blair

852nW. Jennella Dr.

Benson, AZ 85602

520-720-8640

Sent from Mail for Windows

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Outsourcing investigative powers

1 message

azracefans@yahoo.com <azracefans@yahoo.com> Mon, Apr 3, 2023 at 7:25 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Giving 3rd parties investigative power over elections should not be allowed. This would not benefit the citizens of Arizona and would likely be illegal so please don't approve of this terrible idea.

Jim Warren
Cottonwood, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please do not support Clean Election Commission's Prop 211 rule package

1 message

judith battraw <jbattraw@hotmail.com> Sun, Apr 2, 2023 at 6:55 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

The Clean Election Commission's rule package for Prop 211, the donor disclosure initiative, is flawed. It includes giving investigative subpoena powers to third party entities. This is an unwise delegation of state powers to others. Please oppose this package or have this section changed.
Thank you,
Judith Battraw
5473 E Billings St Mesa, AZ 85205

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please do not support this

1 message

Marlene Rowe <yumatime@roadrunner.com> Sun, Apr 2, 2023 at 10:42 PM
Reply-To: Marlene Rowe <yumatime@roadrunner.com>
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to 3rd party groups.

Please confirm receipt of this message or reply. Thank you!

Marlene Rowe
yumatime@roadrunner.com
Yuma Az

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please vot NO!

1 message

Mozelle Ault <ault1944@live.com> Sun, Apr 2, 2023 at 5:16 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. No third party… Only leads to corruption!

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please VOTE NO - Outsourcing investigative powers!

1 message

Vicki Vaughn <vicki@vlvaughn.com> Sun, Apr 2, 2023 at 5:10 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I am requesting you vote NO on any rule package that allows the Clean Elections Commission to outsource investigative powers. Allowing third party groups these investigative subpoena powers seems likely unconstitutional, and is certainly asking for infringement on the rights of religious, charitable and other non-profit organizations.

Respectfully,

Vicki Vaughn

Precinct Committeeman

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please vote NO

1 message

Deb Oberhamer <deboberhamer@gmail.com> Mon, Apr 3, 2023 at 7:22 AM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Thank you,

Deb Oberhamer
AZ resident and voter
Sent from my iPad

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please vote no on any clean election bill that is outsourced to a third party

1 message

Annette Hettinger <hettingera63@gmail.com> Mon, Apr 3, 2023 at 11:10 AM
To: grrc@azdoa.gov

Thank you

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please vote No

1 message

Rhonda Davis <rivervalleyarabians@gmail.com> Mon, Apr 3, 2023 at 7:03 AM
To: grrc@azdoa.gov

Please v**ote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!"**

Sincerely,
Rhonda Davis
480.292.5323

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 201 donor disclosure initiative

1 message

Kristi Macdonald <kdmacdo@gmail.com> Mon, Apr 3, 2023 at 7:47 AM
To: grrc@azdoa.gov

I as an Arizona tax paying citizen urge you to vote NO on any rules that allow the Clean Elections Commission to outsource their investigative powers to third party groups. We don't need outside un-appointed bureaucrats usurping the Clean Elections agency's oversight and powers.
Sincerely, Kristi Macdonald

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Judi Williams <judikaywilliams47@gmail.com> Sun, Apr 2, 2023 at 4:30 PM
To: grrc@azdoa.gov

I am urging you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!"

--
God Bless America and God Bless You
Judi Kay Williams
1845 Buena Vista Trail
Prescott, AZ 86305
(310) 486-6995 / Cell

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Dianna <1diannagates@gmail.com> Sun, Apr 2, 2023 at 4:36 PM
To: grrc@azdoa.gov

Hello,

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Thank you,

Dianna Gates

Glendale

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Pat Keitel <pmkeitel@gmail.com> Sun, Apr 2, 2023 at 4:43 PM
To: grrc@azdoa.gov

I urge you to Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!
This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

With Gratitude,
Pat Keitel,
Founding Member of the AZ Free Enterprise Club

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

mz julesaz <juliwebb99@gmail.com> Sun, Apr 2, 2023 at 5:43 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Thank You - Juli Webb
602-312-6928

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Rick Johnson <94harleyrider@gmail.com> Sun, Apr 2, 2023 at 7:15 PM
To: grrc@azdoa.gov

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

This is setting us up for certain disaster, with religious groups and other organizations being harassed by lawyers on witch hunts for possible political activities.

Sincerely,

Richard Johnson

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Marialice Haney <mahaney55@yahoo.com> Sun, Apr 2, 2023 at 8:17 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote no on Prop 211. If this bill passes, it will make it even easier for the democrats to attack people they disagree with. We've seen what they do to citizens who express their free speech and their right to protest. It would just make it worst.

Marialice Haney
Phoenix AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Dr. James Pallas <drpallas@gmail.com> Mon, Apr 3, 2023 at 3:40 AM
Reply-To: DrPallas@gmail.com
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups

Thanks...

Jim

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Teri <emailteris@cox.net> Mon, Apr 3, 2023 at 5:20 AM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

John Hartig <jwhiii56@gmail.com> Mon, Apr 3, 2023 at 6:27 AM
To: grrc@azdoa.gov

This is a breach of privacy, this must not go forward. Third Party entities have no business getting access to anyone's political contributions.

John Hartig
Prescott Valley

Gmail

GRRC - ADOA <grrc@azdoa.gov>

PROP 211

1 message

Marcia Sahag <mams@cox.net> Mon, Apr 3, 2023 at 7:02 AM
To: grrc@azdoa.gov

Dear Sirs:

I am against the proposal of giving investigative subpoena powers to 3rd party entities that is suggested in the rule package to the Governor's Regulatory Review Commission. This will only release power to control non-profits and religious institutions. Vote NO on any package that allows outsourcing investigative powers to third party groups!

Marcia Sahag

mams@cox.net

Gmail

GRRC - ADOA <grrc@azdoa.gov>

prop 211

1 message

Ute Edge <edgestein@gmail.com> Mon, Apr 3, 2023 at 7:03 AM
To: grrc@azdoa.gov

To whom it may concern,

As a PC in Yuma County I take the oppoturnity to urge you to vote NO on any ruling package that allows the Clean Elections Commission to outsource their investigative powers to third party groups .

Thank you for your consideration

Ute Edge

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Earthlink <lkbattin@earthlink.net> Mon, Apr 3, 2023 at 7:51 AM
To: grrc@azdoa.gov

Clean Election Commission,

I urge you vote **NO** on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Larry Battin
Cornville, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

Vickie Moak <vicklee724@gmail.com> Mon, Apr 3, 2023 at 11:02 AM
To: grrc@azdoa.gov

Please vote NO on Prop 211. No outsourcing to third party groups! This could be unconstitutional subpoena power by a state agency. I'm urging a NO VOTE on any rule package that allows outsourcing.

Thank you.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

cmg70@1791.com <cmg70@1791.com> Mon, Apr 3, 2023 at 1:56 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups regardless of partisanship!

The Clean Election Commission, the state agency that is in charge of overseeing and enforcing the Prop 211 donor disclosure initiative, has submitted their proposed rule package to the Governor's Regulatory Review Commission to implement the law. In the rule package they are proposing to give investigative subpoena powers to 3rd party entities!

We know that this would empower left wing attorney Marc Elias and other leftist groups to conduct fishing expeditions against conservative religious institutions, charitable organizations and other non-profits that they think are engaging in election activities! We do not agree with that anymore than we would agree with a third party on the right side being given these powers, even though, realistically we know that scenario rarely, if ever, occurs.

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Unelected bureaucrats is bad enough, but we certainly don't want third parties of any stripe given such power.

Sincerely,

Dennis Genge, CPA (ret), PC LD3

Christine Maceri Genge, CPA (ret), PC LD3,

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211 Donor Disclosure

1 message

Margaret Barnes <mgbarnes5@gmail.com> Mon, Apr 3, 2023 at 8:20 AM
To: grrc@azdoa.gov

Commissioners:
Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.
Respectfully,

Margaret Barnes
6517 N 46th St

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211 donor disclosure initiative

1 message

Kathryn Farkas <kafarkas51@gmail.com> Sun, Apr 2, 2023 at 4:58 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Our government needs to be lawful NOT unconstitutional.

--
Sincerely,

Kathryn Farkas
1271 E Linda Lane
Chandler, AZ 85225-5314
kafarkas51@gmail.com
kfarkas@farkas.net
kathryn_farkas@hotmail.com

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211 donor disclosure

1 message

Loriehope53 <loriehope53@aol.com> Mon, Apr 3, 2023 at 6:40 AM
Reply-To: Loriehope53 <loriehope53@aol.com>
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

To those involved with this vote and commission,

Please vote NO in allowing the clean elections commission to outsource their investigative powers to third party groups.

Can you not do this yourselves with integrity?

Thank You

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211 proposed rule package

1 message

Linda Jorgensen <ljorgensen1952@gmail.com> Sun, Apr 2, 2023 at 8:41 PM
To: grrc@azdoa.gov

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative subpoena powers to third party groups. This could open the door for negative biased investigations.

Thank you for considering my request.

Sincerely,
Mrs. Linda Jorgensen
Sun City

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211 proposed rule package

Cil Jennings <ciljennings@gmail.com> Sun, Apr 2, 2023 at 4:28 PM
To: grrc@azdoa.gov

I understand that the rule package being proposed by the Clean Election Commission is asking you to give investigative subpoena powers to 3rd party entities. This is an outrageous request by a state agency to delegate this subpoena power. It most certainly is also unconstitutional.

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party group.

Respectfully,

CIL JENNINGS
Lake Havasu City
Cell phone: 858-775-8563

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211 rule package

1 message

KATHLEEN WEBSTER <w19137@aol.com> Sun, Apr 2, 2023 at 5:21 PM
To: grrc@azdoa.gov

Please vote “no” on giving investigative subpoena powers to 3 rd parties. The Clean Election Commission should not outsource their investigative powers to third party groups.
Thank you

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211 VOTE NO

1 message

Bruce Weber <fiji66@icloud.com> Mon, Apr 3, 2023 at 6:58 AM
To: grrc@azdoa.gov

What are you folks thinking, other than another way to steal elections!!

Vote no on Prop 211

Regards,
Bruce Weber

Maricopa County resident

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

lcapa1960@gmail.com <lcapa1960@gmail.com> Sun, Apr 2, 2023 at 4:26 PM
To: grrc@azdoa.gov

Do not give subpoena powers to 3rd party entities. This seems rife with ways to be corrupt. This should not be allowed. Please vote “NO” on the proposed rules associated with this Prop.

Thank you.

Louie Caparelli

2235 Vista Dr

Sedona, AZ 86336

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211.

1 message

myshelbymark3 <myshelbymark3@proton.me> Sun, Apr 2, 2023 at 4:54 PM
To: grrc@azdoa.gov

This initiative was pushed by outside money and not from the people of Arizona. We don't want groups that hate God, our Constitution and Patriots to have ANY say in our elections or policies. I truly wish you would stay in the states you've already ruined and leave us in Arizona that love our freedom alone. 211 is most likely unconstitutional. If there had not been millions of dollars of outside money funneled to Arizona we would not have unconstitutional initiatives even put on the ballot. Just one more reason we don't want states like commiefornia to polute our state with failed policies. Do not California My Arizona!

Sent from Proton Mail mobile

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Proposed rule package

1 message

Janis Schmidt <jangregschmidt@gmail.com> Sun, Apr 2, 2023 at 11:05 PM
To: grrc@azdoa.gov

Dear Regulatory Review Commission,
I'm writing to urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.
Thank you
Janis Schmidt
Republican PC Captain, Copperwood Precinct LD27
602-320-7039

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Proposed Rule Package

1 message

Jim & Vickie Parks <byjimnee@commspeed.net> Mon, Apr 3, 2023 at 4:46 AM
To: grrc@azdoa.gov

To: Arizona Governor's Regulatory Review Commission:

Re: Proposed rule package

I am urging a NO Vote on any rule package that allows the Clean Elections Commission to outsource investigative powers ro a third party group.This would be dangerous and would open an entire set of new problems. A NO Vote would seem like common sense. Any move to outsource these powers should be unconstitutional.

Respectfully,
Vickie Parks

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Proposed rule package change

1 message

Charles Mackey <macksn@me.com> Sun, Apr 2, 2023 at 10:58 PM
To: grrc@azdoa.gov

GRCC:

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. I can't believe that giving the Clean Elections Commission investigative subpoena powers to 3rd party groups would be a legal use of Clean Elections powers.

Thank you,
Charles Mackey

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Proposed rule package for enforcing Prop 211

1 message

Lynn Clemmens <lynn.clemmens@gmail.com> Mon, Apr 3, 2023 at 10:49 AM
To: grrc@azdoa.gov

The Clean Election Commission, the state agency that is in charge of overseeing and enforcing the Prop 211 donor disclosure initiative, has submitted their proposed rule package to the Governor's Regulatory Review Commission to implement the law. In the rule package they are proposing to give investigative subpoena powers to 3rd party entities!
This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

I urge you to vote NO on any rule package that allows the Clean Elections

Commission to outsource their investigative powers to third party groups!"

Lynn Clemmens

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Proposed rule package

1 message

Kathleen Splittstoesser <ksplitts8@hotmail.com> Sun, Apr 2, 2023 at 5:15 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Thanks

Kathleen Splittstoesser

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Protect our elections

1 message

jbailey1114 <jbailey1114@juno.com> Sun, Apr 2, 2023 at 6:41 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Election Commission to outsource their investigative powers to third party groups.
Sincerely, Ms Judith Bailey

Sent from my Verizon, Samsung Galaxy smartphone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Request

1 message

Rose Cudzewicz <rose008@aol.com> Mon, Apr 3, 2023 at 10:39 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Rosemary Cudzewicz
10659 E. Karen Drive
Scottsdale, AZ 85255

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rule package

1 message

Mary Jurica <mjurica@cox.net> Sun, Apr 2, 2023 at 7:29 PM
To: grrc@azdoa.gov

Please vote NO on any rules package that allows the Clean Election Commission to outsource their investigative powers to a third party group!!

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rule package

1 message

greenview@cox.net <greenview@cox.net> Mon, Apr 3, 2023 at 10:04 AM
To: grrc@azdoa.gov

Please vote no on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Janet Mensik
Sleepy Valley PC

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rule package

1 message

Lynda Patrick-Hayes <lkph1948@gmail.com> Mon, Apr 3, 2023 at 1:47 PM
To: grrc@azdoa.gov

Please vote NO on any package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Lynda Patrick-Hayes
Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rule package

1 message

Sharon Mascari <sharonmascari@yahoo.com> Mon, Apr 3, 2023 at 2:17 PM
Reply-To: Sharon Mascari <sharonmascari@yahoo.com>
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

As you review the recently submitted rule package to the Clean Elections Commission, we urge you to vote NO to anything that allows outsourcing investigative powers to third party groups.

Mr and Mrs Mascari

Sent from Yahoo Mail on Android

Gmail

GRRC - ADOA <grrc@azdoa.gov>

rule package

1 message

Jack Payne <jackpayneaz@gmail.com> Sun, Apr 2, 2023 at 4:35 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rulepackage

1 message

Bob <jamrfm@cox.net> Mon, Apr 3, 2023 at 10:10 AM
To: grrc@azdoa.gov

Please vote no on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Robert Mensik
Sleepy Ranch PC
Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rules Package

1 message

Evelyn Palmer <evpalmer@cox.net> Mon, Apr 3, 2023 at 2:12 AM
To: Governor Regulatory Review Commission <grrc@azdoa.gov>

I understand the Clean Election Commission, the state agency that is in charge of overseeing and enforcing the Prop 211 donor disclosure initiative, has submitted their proposed rule package. In this package, they are proposing to give investigative subpoena power to 3rd party entities. This should not stand. Partisans should not be given opportunities to meddle. The state of elections at this time is bad enough. Please vote NO on allowing 3rd party entities to have investigative subpoena powers.

Evelyn Palmer

Goodyear, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rules Package

1 message

Carole <cchalloner@cox.net> Mon, Apr 3, 2023 at 6:19 AM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!
Thank you
Carole Challoner
4555 East Mayo Blvd.
#6232
Phoenix AZ 85050

Sent from my iPad

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Rules package Prop 211

1 message

Nikki Colletti <nicollet@cox.net> Mon, Apr 3, 2023 at 6:54 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups! This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Nikki Colletti

Glendale, AZ

Sent from Mail for Windows

Gmail

GRRC - ADOA <grrc@azdoa.gov>

RULES PACKAGE

1 message

Joyce Haver <jah@joycehaverinc.com> Sun, Apr 2, 2023 at 5:14 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please Vote NO on any Rules Package the allows CEC to outsource their investigative powers to third party groups. Outrageous!! .

Sent from Mail for Windows

Gmail

GRRC - ADOA <grrc@azdoa.gov>

The Clean Election Commission

1 message

Gary Saxhaug <gsaxhaug@gmail.com> Sun, Apr 2, 2023 at 6:28 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.
Thank you,
Gary J. Saxhaug
Anthem, AZ
605-940-6519

Gmail

GRRC - ADOA <grrc@azdoa.gov>

The Clean Election Commission

1 message

Valerie Steimle <valeriesteimle@yahoo.com>
Reply-To: Valerie Steimle <valeriesteimle@yahoo.com>
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Sun, Apr 2, 2023 at 4:48 PM

Dear Governor's Regulatory Review Council

The Clean Election Commission has submitted their proposed rule package to you, the Governor's Regulatory Review Commission, to implement the Prop 211 donor disclosure initiative.

As I understand it, they are proposing to give investigative subpoena powers to 3rd party entities. This would empower liberals like attorney Marc Elias and other lefty groups to conduct fishing expeditions against conservative religious institutions, charitable organizations and other non-profits that they think are engaging in election activities.

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!!

Thank you for your time in this matter.

Valerie Hollobaugh

Mesa, AZ

valeriesteimle@yahoo.com

Gmail

GRRC - ADOA <grrc@azdoa.gov>

The Prop 211 donor disclosure initiative

1 message

STARR COSTA <estarrcosta@yahoo.com> Mon, Apr 3, 2023 at 12:57 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

We urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!
This would empower liberals and other lefty groups to conduct fishing expeditions against conservative religious institutions, charitable organizations and other non-profits that they think are engaging in election activities! This is unconscionable. Please protect our rights and not encumber and attack our religious and charitable organizations.

Sincerely,

Russell and E. Starr Costa

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Urge to vote NO on any rule package that allows the Clean Elections Commission to outsource investigative powers to third party groups

1 message

Nikki Eancheff <nikki.eancheff@yahoo.com> Mon, Apr 3, 2023 at 9:20 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Governor's Regulatory Review Commission members:

Please consider this email to urge to the Commission to vote NO on any rule package that allows the Clean Elections Commission to outsource investigative powers to third party groups.

Thank you,

Nikki Eancheff
c: 602.677.9397
e: nikki.eancheff@yahoo.com

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote "No" On Current Rules Package Allowing CEC to Outsource Investigations

1 message

Craig McEwan <jcraigmcewan@gmail.com> Sun, Apr 2, 2023 at 4:39 PM
To: grrc@azdoa.gov

Dear Clean Elections Commission,

Please do not allow our Arizona elections to be further compromised by outsourcing investigations to nationwide and international unAmerican interests. Our clean elections in Arizona are already in shambles; please do not do further damage to justice by allowing our constitutional system to be outsourced to partisan interests with causes not in accord with the rule of law.

Sincerely,

Craig McEwan

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO - outsourcing investigative powers

1 message

Vernon Vaughn <vlvx2@vlvaughn.com>
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Sun, Apr 2, 2023 at 6:20 PM

TO: Governor's Regulatory Review Commission

Please vote NO on any rule package that allows the Clean Elections Commission to outsource investigative powers.

Allowing third party groups these investigative subpoena powers is likely unconstitutional. It most certainly is asking for infringement on the rights of religious, charitable and other non-profit organizations.

Please Vote NO!

Regards

Vernon Vaughn

Precinct Committeeman

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO - Prop 211 rules package..

1 message

LaMarche Frances <francielam@gmail.com> Sun, Apr 2, 2023 at 9:18 PM
To: grrc@azdoa.gov

To whom it may concern at the Governor's Regulatory Review Commission,

It is my understanding that the Clean Election commission has submitted a rules package where they propose to give investigative subpoena powers to 3rd party entities.
It would not be a good thing to hand over such power to a group/person/party that is not part of a government office or commission where the citizens do not have some recourse
as to bad behavior/in appropriate actions/biased motives. Out sourcing is not always a good thing and in this instance I see nothing good in it.

Please vote NO on any rule package that would allow the Clean Elections Commission to outsource their investigative powers to a third party.

Respectfully,

Francie LaMarche
Pct 275 Pima PC Captain
Tucson, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

VOTE NO !!

1 message

Amy Crothers <arizonacrothers@gmail.com> Sun, Apr 2, 2023 at 9:20 PM
To: grrc@azdoa.gov

Hello,

I cannot even believe I have to write an email to encourage The Clean Election Commission to VOTE NO on any rule package that allows this Commission to outsource their investigative powers to third party groups!

Seriously- why would you vote yes on this???
We do not need any third-party groups of activists coming after our religious beliefs or be our thought police.

Everyone on this Commission needs to wake up and stop with the insanity.

Amy Crothers
Fountain Hills

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO

1 message

Angie Anderson <garnang428@gmail.com> Sun, Apr 2, 2023 at 4:31 PM
To: grrc@azdoa.gov

Hello,

We must keep clean Elections clean. Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Thank you,
Leiann Anderson
Green Valley, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO

1 message

azswansons@gmail.com <azswansons@gmail.com> Sun, Apr 2, 2023 at 4:37 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!" No third party should have subpoena powers! This is not allowed by our State Constitution. Do what is right for our state and we the citizens of AZ — Vote NO!

Tempe. AZ Resident
LD12

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO

1 message

Leslee Wilson <leslee.presto@gmail.com> Sun, Apr 2, 2023 at 11:55 PM
To: grrc@azdoa.gov

As a legal registered voter in Arizona, I ask you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. This is BAD for Arizona.

Thank you,

Leslee Wilson

Gmail

GRRC - ADOA <grrc@azdoa.gov>

vote No

1 message

Ruth Denny <rhp@westriv.com> Mon, Apr 3, 2023 at 5:44 AM
Reply-To: ruthdenny@westriv.com
To: grrc@azdoa.gov

Please vote NO on any rule package that would allow 3rd parties to investigate anyone or entity on Election Issues!

Ruth Denny

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote No

1 message

Cathy Schwanke <schwankeld1@gmail.com> Mon, Apr 3, 2023 at 9:28 AM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups. This is very important to freedom.

Sincerely,

Cathy Schwanke
Mom, grandma, community precinct committeeman

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote No against outsourcing investigative powers

Wendy Ihms <ihmst4@gmail.com> Sun, Apr 2, 2023 at 4:16 PM
To: grrc@azdoa.gov

I am writing to encourage a “NO” vote against the Clean Elections Committee outsourcing any investigative actions to a third party!

Thank you for your attention.

Sent from my iPhone

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO no 3rd party groups allowed

1 message

Miki Abatecola <miki.abatecola@gmail.com> Sun, Apr 2, 2023 at 10:25 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups! I want my vote to count. Do not disenfranchise me.

Maryclare Abatecola
Registered voter
~in God we trust

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote No on any bill that would outsource

1 message

Tamra White <tdwhite4098@gmail.com> Sun, Apr 2, 2023 at 9:46 PM
To: grrc@azdoa.gov

We urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Sincerely
Tamra and David White
3805 W Dynamite Blvd, Phoenix, AZ 85083
Tdwhite4098@gmail.com
--
Tamra White
tdwhite4098@cox.net

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups

1 message

Connie Wright <ctgwright@gmail.com> Sun, Apr 2, 2023 at 9:49 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!”

Connie Jacks
LD27

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups

1 message

Teddi Thompson <teddit@icloud.com> Sun, Apr 2, 2023 at 9:05 PM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!”

Paul & Teddi Thompson
4127 W Tunnel Mine Rd
New River, AZ 85087

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO on any rule package to outsource investigative powers!

1 message

RHONDA SMITH <rhondadsmith@cox.net> Sun, Apr 2, 2023 at 5:12 PM
To: grrc@azdoa.gov

Hello,
I respectfully urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups! This would give powers to unelected officials and this is not what the people of Arizona want.

Sincerely,
Rhonda Smith
Phoenix - Ahwatukee Resident

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote no on Clean Elections Commission outsourcing their investigative powers

1 message

JULIA GRESHAM <jewelia@cox.net> Sun, Apr 2, 2023 at 4:32 PM
Reply-To: JULIA GRESHAM <jewelia@cox.net>
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups! This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Julia Gresham

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO on Outsourcing Clean Elections Commission outsourcing

1 message

Sally Mueller <smueller@lockstep.com> Mon, Apr 3, 2023 at 9:11 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Hello –

Please vote NO on any rules packages that allow the Clean Elections Commission to outsource their investigative powers to third party groups.

Thank you,

Sally Mueller

Arizona resident since 1979

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote no on outsourcing investigations

1 message

Richard Hale <rhalehale47@gmail.com> Mon, Apr 3, 2023 at 8:39 AM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!”
Thanks Rich Hale 10849 W Brookside Dr Sun City 85351

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO On Outsourcing Investigative Powers

1 message

geoduffield@cox.net <geoduffield@cox.net> Sun, Apr 2, 2023 at 9:32 PM
To: grrc@azdoa.gov

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

George Duffield
5188 S Gold Leaf Pl

Chandler, AZ 85249

Mobile 618-792-6164

Home 480-361-8094

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO on Prop 211

1 message

Lisa M. Rosado <lisa.rosado74@gmail.com> Sun, Apr 2, 2023 at 8:37 PM
To: grrc@azdoa.gov

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote No on the Rule package for prop 211

1 message

Mary Kay Ruwette <mkayfreedom@pm.me> Mon, Apr 3, 2023 at 12:32 PM
To: grrc@azdoa.gov

Vote No on any rules package that allows the Clean Elections commission to outsource their investigative powers to third party groups.

Thanks,
Mary Kay Ruwette
Wickenburg, AZ

Sent from Proton Mail for iOS

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO to ANY Clean Elections Commission outsourcing rule package.- NO 3rd party involvement in elections

1 message

Lezlie Forster <lwfden@gmail.com> Mon, Apr 3, 2023 at 7:37 AM
To: grrc@azdoa.gov

To the Governor's Regulatory Review Commission:

The Clean Election Commission is the state agency in charge of overseeing and enforcing the Prop 211 donor disclosure initiative. Their proposed a RULES package to you…the Governor's Regulatory Review Commission …gives investigative subpoena powers to 3rd party entities! I urge you to vote against this. NO! This must be voted down, turned down.

There should be NO outside groups engaging in Election Activities. We already have a public majority questioning any integrity in election activities. The proposals are outrageous and represent an unconstitutional delegation of subpoena power by a state agency. NO third party involvement in elections.

Sincerely,

L.W.Forster

Gmail

GRRC - ADOA <grrc@azdoa.gov>

VOTE NO to give 3nrd parties subpoena powers

1 message

Melissa Price <azld3pc@gmail.com> Sun, Apr 2, 2023 at 5:03 PM
To: grrc@azdoa.gov

VOTE NO to give 3rd parties subpoena powers!

May His Grace & Blessings be Yours,

Melissa Price

Carefree Precinct Committeeman
Mobile: (480) 227-1927
Email: AZLD3PC@gmail.com

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO to outsourcing investigative powers to 3rd parties

1 message

Travis Chow <vtjchows@gmail.com> Sun, Apr 2, 2023 at 4:51 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Vicki Chow

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO to outsourcing investigative powers to 3rd parties

1 message

Travis Chow <vtjchow@gmail.com> Sun, Apr 2, 2023 at 4:50 PM
To: grrc@azdoa.gov

Please vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Travis Chow

Gmail

GRRC - ADOA <grrc@azdoa.gov>

VOTE NO!!

1 message

lulical61 <lulical61@protonmail.com> Sun, Apr 2, 2023 at 6:28 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

As an Arizona citizen, I contact you today to vote NO on any proposed rule package by the Clean Election Commission, that would allow their role in enforcing Prop 211 to be outsourced to third party entities that have subpoena power! This preposition will be found to be unconstitutional and in the meantime, you are allowing a government agency to shift its oversight to no doubt partisan third parties.

We already have intense government scrutiny in our lives and this proposition and the current administration no doubt will be want to continue these efforts. I am requesting that you please not allow the Clean Election Commissions to outsource its responsibilities.

Maria Lopez
Tucson, AZ

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote NO!

1 message

Susan Norton-Scott <sns5661@gmail.com> Sun, Apr 2, 2023 at 5:29 PM
To: grrc@azdoa.gov

This is important.

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Election integrity is crucial to our society.

Susan Norton-Scott

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote No

Christine Stoner <chmast@comcast.net> Sun, Apr 2, 2023 at 4:18 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

On any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Sincerely,
Christine Stoner

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please VOTE NO on rule package

1 message

Brenda Simon <b1992_7@yahoo.com> Mon, Apr 3, 2023 at 3:24 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Hello,

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Respectfully,

Brenda Simon

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Please Vote NO

1 message

Douglas Simon <douglassimonphotography@gmail.com> Mon, Apr 3, 2023 at 3:26 PM
To: grrc@azdoa.gov

Hello,

I urge you to vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

Respectfully,

Doug Simon

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote No on 3rd party groups

1 message

SJ <SJMoon1@pm.me> Mon, Apr 3, 2023 at 4:51 PM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote NO on any package that allows the Clean Elections Commission to outsource their investigative powers to third party groups.

SJ Moon

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Vote no

1 message

Alisha Farren <alisha.farren@gmail.com> Mon, Apr 3, 2023 at 6:01 PM
To: grrc@azdoa.gov

vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Prop 211

1 message

TeriGgirl <teriggirl@gmail.com> Tue, Apr 4, 2023 at 6:46 AM
To: grrc@azdoa.gov

Vote NO on any rule package that allows the Clean Elections Commission to outsource their investigative powers to third party groups!

This is an outrageous and likely unconstitutional delegation of subpoena power by a state agency.

Teri Grunewald
AZ voter

Gmail

GRRC - ADOA <grrc@azdoa.gov>

Clean Elections

1 message

Bogensberger Dr.Hans Gerbert <hansgebog@yahoo.com> Tue, Apr 4, 2023 at 8:40 AM
To: "grrc@azdoa.gov" <grrc@azdoa.gov>

Please vote no on any rule package that allows the Clean Election Commission to outsource their investigative powers to third party groups!!

H.G Bogensberger God bless America

ARIZONA STATE BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11

Amend: R4-11-101, R4-11-201, R4-11-202, R4-11-203, R4-11-301, R4-11-303, R4-11-401, R4-11-403, R4-11-701, R4-11-702, R4-11-1502, R4-11-1503

New Section: R4-11-206, R4-11-1210, R4-11-1601, R4-11-1602, R4-11-1603, R4-11-1603

New Article: Article 16

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: **March 3, 2023**

SUBJECT: **ARIZONA STATE BOARD OF DENTAL EXAMINERS**
Title 4, Chapter 11

Amend: R4-11-101, R4-11-201, R4-11-202, R4-11-203, R4-11-301, R4-11-303, R4-11-401, R4-11-403, R4-11-701, R4-11-702, R4-11-1502, R4-11-1503

New Section: R4-11-206, R4-11-1210, R4-11-1601, R4-11-1602, R4-11-1603, R4-11-1603

New Article: Article 16

Summary:

This regular rulemaking with the Arizona State Board of Dental Examiners (Board) seeks to amend twelve (12) rules, add one (1) article, and add six (6) new sections to ensure that dental professionals are properly licensed and regulated by (1) amending requirements for continuing education related to tobacco cessation and chemical dependency, (2) ensuring that course credentials are sent directly to the Board from the issuing institution and (3) clarifying that notices of complaints may be sent via email. The Board is also conducting the rulemaking to account for the newly created mid-level dental profession, Dental Therapists, which can be found in Arizona Revised Statutes §§ 32-1276 – 32-1276.05.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Board cites both general and specific statutory authority for these rules.

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

The Board indicates that the rules do not establish a new fee or contain a fee increase.

3. 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 Board indicates it did not review or rely on any study in conducting this rulemaking.

4. Summary of the agency's economic impact analysis:

According to the Board, there is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist.

5. 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 that by amending its rules this will be a benefit to the dental community and the public they serve with minimal costs.

6. What are the economic impacts on stakeholders?

Applicants for a dental therapist license will obtain the costs of the required education and license to practice in the State of Arizona. The benefit of the new license increase access for rural areas of the state, which includes tribal communities. Additionally, this allows tribal communities to attract dental providers in their area and retain licensees.

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

The Board indicates that the final rules are not a substantial change, considered as a whole, from the proposed rules and any supplemental proposals.

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

The Board indicates that it received one comment from the Inter Tribal Association of Arizona dated July 25, 2022, requesting the Board adopt language clarifying that dental therapy services may be provided on tribal lands. After consulting with the Board's Assistant Attorney General, the Board determined that such language was already addressed in federal law and it is not necessary or appropriate to address that language in these rules. Council staff believes the Department has adequately responded to the comments on these proposed rules.

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

The Board indicates that the rules require a general permit pursuant to ARS § 41-1037.

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

The Board indicates that this subsection does not apply as there is no federal law applicable to this rule.

11. Conclusion

This regular rulemaking with the Arizona State Board of Dental Examiners (Board) seeks to amend twelve (12) rules, add one (1) article, and add six (6) new sections to ensure that dental professionals are properly licensed and regulated and to account for the newly created mid-level dental profession, Dental Therapists.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

Arizona State Board of Dental Examiners
"Caring for the Public's Dental Health and Professional Standards"

1740 West Adams Street, Suite 2470
Phoenix, Arizona 85007
P: (602)242-1492
E: info@dentalboard.az.gov
W: https://dentalboard.az.gov

February 10, 2023

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 11. State Board of Dental Examiners

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Governor's Regulatory Review Council ("Council"). The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on December 2, 2022 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
   a. Cover letter signed by the Board's Executive Director;
   b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
   c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Ryan P. Edmonson
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected **Rulemaking Action**

R4-11-101	Amend
R4-11-201	Amend
R4-11-202	Amend
R4-11-203	Amend
R4-11-206	New Section
R4-11-301	Amend
R4-11-303	Amend
R4-11-401	Amend
R4-11-403	Amend
R4-11-701	Amend
R4-11-702	Amend
R4-11-1210	New Section
R4-11-1502	Amend
R4-11-1503	Amend
Article 16	New Article
R4-11-1601	New Section
R4-11-1602	New Section
R4-11-1603	New Section
R4-11-1604	New Section

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

Authorizing statute: A.R.S. § 32-1207

Implementing statutes: A.R.S. §§ 32-1201 et seq.

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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. 1230, June 3, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 1173, June 3, 2022

Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 2631, October 7, 2022

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

Name:	Ryan Edmonson, Executive Director
Address:	Arizona State Board of Dental Examiners 1740 W. Adams St., Ste. 2470 Phoenix, AZ 85007
Telephone:	(602) 542-4493
E-Mail:	ryan.edmonson@dentalboard.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Board needs to amend its rules to address Dental Therapists and make other necessary changes to ensure the rules are clear, concise, and consistent.

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:
No study was reviewed.

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:

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. Thus, the economic impact is minimized.

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

There were no changes between the supplemental proposed rulemaking and the final rulemaking.

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

The Board received a letter from the Inter Tribal Association of Arizona dated July 25, 2022, requesting the Board adopt language clarifying that dental therapy services may be provided on tribal lands. However, in consultation with the Board's Assistant Attorney General, the Board determined that such language was already addressed in federal law and it is not necessary or appropriate to address that language in these rules.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

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 Board issues general permits to licensees who meet the criteria established in statute and rule.

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:

Not applicable.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the

agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

ARTICLE 2. LICENSURE BY CREDENTIAL

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

ARTICLE 4. FEES

ARTICLE 7. DENTAL ASSISTANTS

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTIONS

R4-11-1502. Dental Consultant Qualifications

R4-11-1503. Initial Complaint Review

ARTICLE 16. ~~EXPIRED~~ DENTAL THERAPISTS

R4-11-1601. ~~Expired~~ Duties and Qualifications

R4-11-1602. Limitation on Number Supervised

R4-11-1603. Dental Therapy Consultants

R4-11-1604. Written Collaborative Practice Agreements; Collaborative Practice Relationships

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide ~~(N2O)~~ and oxygen ~~(O2)~~ with or without ~~local anesthesia~~ Local Anesthesia.

~~"Application" means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.~~

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard, mineralized deposit attached to the teeth.

~~"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.~~

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental, dental therapy, or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

~~"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.~~

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a ~~recognized continuing dental education~~ Recognized Continuing Dental Education program.

"Deep sedation" is a ~~drug-induced~~ Drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

~~"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).~~

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

~~"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.~~

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental therapist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

~~"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.~~

"Documentation of attendance" means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of ~~credit hours~~ Credit Hours;

Name of speaker; and

Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental, dental therapy, or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival ~~(gum)~~ sulcus ~~(crevice)~~ along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a ~~drug-induced~~ Drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or ~~drug-induced~~ Drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

~~"Jurisdiction" means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.~~

"Licensee" means a dentist, dental therapist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic ~~drug~~ Drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to

light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the ~~drugs~~ Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Mobile dental permit holder" means a Licensee or denturist who holds a mobile permit under R4-11-1301, R4-11-1302, or R4-11-1303.

"Moderate sedation" is a ~~drug-induced~~ Drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The ~~drugs~~ Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a ~~drug~~ Drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide ~~(N2O/O2)~~ used as an inhalation analgesic.

~~"Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.~~

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a ~~drug~~ Drug or ~~non-drug~~ non-Drug substance or combination inhalation and enterally administered ~~drug~~ Drug or ~~non-drug~~ non-Drug substance in a dental office or dental clinic to achieve ~~minimal~~ Minimal Sedation or ~~moderate sedation~~ Moderate Sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the ~~drug~~ Drug bypasses the gastrointestinal tract.

~~"Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.~~

~~"Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.~~

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the ~~epithelial attachment~~ Epithelial Attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

~~"Polish"~~ "Polishing" means~~, for the purposes of A.R.S. § 32-1291(B) only,~~ a procedure limited to the removal of ~~plaque~~ Plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and ~~polishing~~

Polishing agent. A ~~licensee~~ Licensee or dental assistant shall not represent that this procedure alone constitutes an oral ~~prophylaxis~~ Prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only ~~drug~~ Drug" does not include a ~~controlled substance~~ Controlled Substance but does include:

Any ~~drug~~ Drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any ~~drug~~ Drug that is limited by an approved new ~~drug~~ Drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful ~~drug~~ Drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any ~~drug~~ Drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances ~~used in relation to dental hygiene procedures~~ that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a ~~scaling~~ Scaling and ~~polishing~~ Polishing procedure performed on patients with healthy tissues to remove coronal ~~plaque~~ Plaque, ~~calculus~~ Calculus, and stains.

~~"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.~~

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school ~~as defined in A.R.S. § 32-1201(18)~~, recognized dental therapy school, recognized dental hygiene school ~~as defined in A.R.S. § 32-1201(17)~~, or recognized denturist school ~~as defined in A.R.S. § 32-1201(19)~~, or sponsored by a national or state dental, dental therapy, dental hygiene, or denturist association, American Dental Association~~,~~ Continuing Education Recognition Program ~~(ADA CERP)~~ or Academy of General Dentistry, Program Approval for Continuing Education ~~(AGD PACE)~~ approved provider, dental, dental therapy, dental hygiene, or denturist ~~study club~~ Study Club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237, or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental therapist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with ~~calculus~~ Calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove ~~plaque~~ Plaque, ~~calculus~~ Calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer ~~general anesthesia~~ General Anesthesia and ~~deep sedation~~ Deep Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Section 1302 permit" means a permit to administer ~~parenteral sedation~~ Parenteral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Section 1303 permit" means a permit to administer ~~oral sedation~~ Oral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental therapists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240~~(A)~~, 32-1276.07, or 32-1292.01~~(A)~~, the Board shall ensure that the applicant has passed the clinical examination of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation. ~~of another state, United States territory, District of Columbia or a regional testing agency~~ Satisfactory completion of the clinical examination may be demonstrated by ~~one of the following:~~

1. ~~Certified~~ certified documentation, sent directly from another state, United States territory, District of Columbia or a ~~regional~~ testing agency that meets the requirements of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or ~~regional~~ testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score~~; or~~

2. ~~Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score~~.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240~~(A)~~ shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240~~(A)(1)~~ shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the ~~American Dental Association~~ Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; ~~and~~
4. Provide evidence regarding the clinical examination by complying with ~~one of the subsections in~~ R4-11-201(A)~~(1).~~; and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

~~**C.** A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional~~

~~testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.~~

~~D.~~**C.** For any application submitted under A.R.S. § 32-1240~~(A)~~, the Board may request additional clarifying evidence required under ~~the applicable subsection in~~ R4-11-201(A)~~(1)~~.

~~E.~~**D.** An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas ~~(HPSAs)~~; or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

~~F.~~**E.** An applicant for dental licensure by credential who works in areas or facilities described in subsection ~~(E)~~ (D) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a ~~licensee~~ Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

~~G.~~**F.** A ~~licensee's~~ Licensee's failure to comply with the requirements in subsection ~~(F)~~ (E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01~~(A)~~ shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01~~(A)(1)~~ shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the ~~American Dental Association~~ Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; ~~and~~
4. Provide evidence regarding the clinical examination by complying with ~~one of the subsections in~~ R4-11-201(A)~~(1).~~; and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

~~**C.** A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of~~

~~Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.~~

~~D.~~ C. For any application submitted under A.R.S. § 32-1292.01~~(A)~~, the Board may request additional clarifying evidence as required under ~~the applicable subsection in~~ R4-11-201(A).

~~E.~~D. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas ~~(HPSAs)~~; or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

~~F.~~E. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection ~~(E)~~ (D) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a ~~licensee~~ Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

~~G.~~F. A ~~licensee's~~ Licensee's failure to comply with the requirements in ~~R4-11-203(F)~~ R4-11-203(E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

R4-11-206. ~~Repealed~~ Dental Therapist Licensure by Credential; Application

A. A dental therapist applying under A.R.S. § 32-1276.07 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental therapist applying under A.R.S. § 32-1276.07 shall:

1. Have a current dental therapy license in another state, territory or district of the United States with substantially the same scope of practice as defined in A.R.S. § 32-1276.03;
2. Submit a written affidavit affirming that the applicant has practiced as a dental therapist for a minimum of 3000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental therapy practice includes experience as a dental therapy educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental therapist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental therapy education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence showing that five years or more before applying for licensure under this section, the applicant completed the clinical examination by complying with R4-11-201(A);
5. Submit official transcripts to the Board directly from a recognized dental therapy school as defined by A.R.S. § 32-1201(21) or an approved third party showing a degree was conferred to the applicant; and

6. Not be required to obtain an Arizona dental hygienist license, if the dental therapist submits one of the following:

a. Certified documentation of a current or past dental hygiene license sent directly from the applicable state, United States territory, District of Columbia to the Board; or

b. Official transcripts sent to the Board directly from a recognized dental hygiene school as defined by A.R.S. § 32-1201(19) or an approved third party showing a degree was conferred to the applicant; or

c. A written affidavit from a recognized dental therapy school as defined in A.R.S. § 32-1201(21) affirming that all dental hygiene procedures defined in A.R.S. § 32-1281 were part of the education the applicant received.

C. For any application submitted under A.R.S. § 32-1276.07, the Board may request additional clarifying evidence required under R4-11-201(A).

D. If an applicant meets all the requirements set forth in this rule except that their current dental therapy license is from a state, territory, or district of the United States that does not include one or more of the following procedures in its legally defined scope, then the applicant must provide evidence of competency before being granted a dental therapy license by credential:

1. Fabricating soft occlusal guards;

2. Administering Nitrous Oxide Analgesia;

3. Performing nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal;

4. Suturing; or

5. Placing space maintainers.

E. The board will accept the any of following as evidence of competency in the aforementioned procedures:

1. A certificate or credential in the procedure(s) issued by a state licensing jurisdiction; or

2. A signed affidavit from a recognized dental therapy school, recognized dental hygiene school, or recognized dental school, affirming that the applicant successfully completed academic coursework that included both theory and supervised clinical practice in the procedure(s).

F. Subject to A.R.S. § 32-1276.04, an applicant for licensure under this section shall pay the fee prescribed in A.R.S. § 32-1276.07, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas; or

2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

G. An applicant for dental therapist licensure by credential who works in areas or facilities described in subsection (F) shall:

1. Commit to a three-year, exclusive service period,

2. File a copy of a contract or employment verification statement with the Board, and

3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

H. A Licensee's failure to comply with the requirements in subsection (G) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
   a. The applicant's dental, dental therapy, dental hygiene, or denturist school, or
   b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, a dental, dental therapy, and dental hygiene license ~~applicants~~ applicant shall provide proof of successfully completing a clinical examination by submitting:
   a. If applying for dental licensure by examination, a copy of the certificate or scorecard sent to the Board directly from ~~the Western Regional Examining Board~~ a clinical examination administered by a state or testing agency that meets the requirements of A.R.S. § 32-1233(2), indicating that the applicant passed a state or regional testing agency ~~the Western Regional Examining~~

~~Board~~ examination that meets the requirements of A.R.S. § 32-1233(2) within the five years immediately before the date the application is filed with the Board;

b. If applying for dental therapy licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state, United States territory, District of Columbia or testing agency that meets the requirements of A.R.S. § 32-1276.01(B)(3)(a). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board. The application must also include the applicant's Arizona dental hygiene license number;

~~b.~~c. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard sent to the Board directly from ~~the Western Regional Examining Board or an Arizona Board approved~~ a clinical examination administered by a state, United States territory, District of Columbia or ~~regional~~ testing agency that meets the requirements of A.R.S. § 32-1285(2). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; ~~or~~

~~c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;~~

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official scorecard sent directly from the National Board examination to the Board;

6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for ~~CPR~~ cardiopulmonary resuscitation training and certification as the American Red Cross or American Heart Association;

7. A license or certification verification from any other jurisdiction–in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;

8. If an ~~a dental or dental hygiene~~ applicant has been licensed or certified in another jurisdiction ~~for more than six months~~, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 calendar days old;

~~9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;~~

~~10.~~9. If the applicant is in the military or employed by the United States government, a letter ~~of endorsement~~ sent to the Board directly from the applicant's commanding officer or supervisor ~~that confirms~~ verifying the ~~applicant's~~ applicant is licensed or

certified by the military ~~service~~ or United States government ~~employment record~~; and

~~11.~~10. The jurisprudence examination fee paid by a method authorized by law.

B. The Board may request that an applicant provide:

1. An official copy of the applicant's dental, dental therapy, dental hygiene, or denturist school diploma from the issuing institution;~~,~~
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names~~,~~;
3. Written verification of the applicant's work history~~,~~; and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within ~~24~~ 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within ~~14~~ 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental therapy license, dental hygiene license, dental consultant license, denturist certificate, ~~drug dispensing registration, business entity~~ Business Entity registration, mobile dental facility or portable dental unit permit,

the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.

2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The ~~24~~ 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.

3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete ~~24~~ 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within ~~10~~ 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.

4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.

5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: ~~24~~ 30 calendar days.

2. Substantive review time-frame: 90 calendar days.

3. Overall time-frame: ~~114~~ 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a ~~retired~~ Retired Licensee or ~~disabled~~ Disabled Licensee ~~dentist or dental hygienist~~ is $15 and shall be paid by a method authorized by law.

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees paid by a method authorized by law:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental therapist triennial renewal fee: $375;
4. Dental therapist prorated initial license fee: $80;
5. Dental hygienist triennial renewal fee: $255;
~~4.~~6. Dental hygienist prorated initial license fee: $55;
~~5.~~7. Denturist triennial renewal fee: $233; and
~~6.~~8. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the following fees paid by a method authorized by law:

1. Jurisprudence examination fee:
    a. Dentists: $300;
    b. Dental therapists: $200;
    c. Dental ~~Hygienists~~ hygienists: $100; and
    ~~c.~~d. Denturists: $250.
2. Licensure by credential fee:
    a. Dentists: $2,000; and
    b. Dental therapists: $1,500;
    c. Dental ~~Hygienists~~ hygienists: $1,000.

3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental therapist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).

4. Penalty for a dentist, dental therapist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:

   a. Failure after 10 days: $50; and

   b. Failure after 30 days: $100.

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the ~~direct supervision~~ Direct Supervision of a licensed dentist or a licensed dental therapist:

1. Place dental material into a patient's mouth in response to a licensed dentist's or licensed dental therapist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
    a. The placement of bands, crowns, and restorations;
    b. Dental dam application;
    c. Acid etch procedures; and
    d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Take final digital impressions for any activating orthodontic appliance, fixed, or removable prosthesis;

~~10.~~11. Prepare a patient for ~~nitrous oxide and oxygen analgesia~~ Nitrous Oxide Analgesia administration upon the direct instruction and presence of a dentist or licensed dental therapist; or

~~11.~~12. Observe a patient during ~~nitrous oxide and oxygen analgesia~~ Nitrous Oxide Analgesia as instructed by the dentist or licensed dental therapist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist or a licensed dental therapist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and ~~plaque~~ Plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental therapists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions, other than digital impressions, for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An ~~irreversible procedure~~ Irreversible Procedure.

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1210. Dental Therapists

Dental therapists shall complete 54 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 31 Credit Hours in any one or more of the following areas: Dental and medical health, dental therapy services, dental therapy treatment planning, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry;
2. No more than 14 Credit Hours in any one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in infectious diseases or infectious disease control;
4. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
5. At least three Credit Hours in any one or more of the following areas: ethics, risk management, chemical dependency, tobacco cessation, or Arizona dental jurisprudence.

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1502. Dental Consultant Qualifications

A dentist, dental therapist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. The Board ~~personnel~~ shall notify the ~~complainant and~~ ~~licensee~~ Licensee, ~~certificate holder~~ denturist, ~~business entity~~ Business Entity or ~~mobile dental permit holder~~ Mobile Dental Permit Holder by certified U.S. Mail when the following occurs:
   a. A formal interview is scheduled, and
   b. ~~The complaint is tabled,~~
   ~~c.~~ ~~A postponement or continuance is granted, and~~
   ~~d.~~ A subpoena, notice, or order is issued.
2. The Board shall notify the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder by U.S. mail or email when the following occurs:
   a. The complaint is tabled, and
   b. The Board grants a postponement or continuance.

~~2.~~3. Board ~~personnel~~ shall provide the ~~licensee~~ Licensee, ~~certificate holder~~ denturist, ~~business entity~~ Business Entity, or ~~mobile dental permit holder~~ Mobile Dental Permit Holder with a copy of the complaint.

~~3.~~4. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to ~~clinical evaluation~~ Clinical Evaluation are:

1. Except as provided in subsection (B)(1)(a), the ~~president's designee~~ President's Designee shall appoint one or more dental consultants to perform a ~~clinical evaluation~~ Clinical Evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
   a. If the complaint involves a dental hygienist, denturist, dental therapist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the ~~president's designee~~ President's Designee shall appoint a dental consultant from that area of practice or specialty.
   b. The Board shall not disclose the identity of the ~~licensee~~ Licensee to a dental consultant performing a ~~clinical examination~~ Clinical Evaluation before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a ~~clinical evaluation~~ Clinical Evaluation report. The ~~president's designee~~ President's Designee shall provide a copy of the ~~clinical evaluation~~ Clinical Evaluation report to the ~~licensee~~ Licensee or ~~certificate holder~~ denturist. The ~~licensee~~ Licensee or ~~certificate holder~~ denturist may submit a written response to the ~~clinical evaluation~~ Clinical Evaluation report.

ARTICLE 16. ~~EXPIRED~~ DENTAL THERAPISTS

R4-11-1601. ~~Expired~~ Duties and Qualifications

A. A dental therapist may perform a procedure not specifically authorized by A.R.S. § 32-1276.03 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental therapist has received training by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school, as defined under A.R.S. § 32-1201, to perform the procedure in a safe manner; and
3. The procedure is performed under the Direct Supervision of, or according to, a written collaborative practice agreement with a licensed dentist.

B. A dental therapist may administer Nitrous Oxide Analgesia as authorized by A.R.S. § 32-1276.03(B)(12) if the dental therapist submits proof directly from an issuing institution of completing courses in the administration of Nitrous Oxide Analgesia offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

C. A dental therapist may perform suturing and suture removal as authorized by A.R.S. § 32-1276.03(B)(21) if the dental therapist submits proof directly from an issuing institution of completing courses in suturing and suture removal offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

D. A dental therapist may perform an Irreversible Procedure only if it is specifically authorized by A.R.S. § 32-1276.03 or meets the conditions of R4-11-1601(A).

R4-11-1602. Limitation on Number Supervised

A dentist shall not provide direct supervision for more than three dental therapists while the dental therapists are providing services or performing procedures under A.R.S. § 32-1276.03 or R4-11-1601.

R4-11-1603. Dental Therapy Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental therapy consultants may:

1. Participate in Board-related procedures, including a Clinical Evaluation, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's or denturist's quality of care; and
2. Participate in onsite office evaluations for infection control, as part of a team.

R4-11-1604. Written Collaborative Practice Agreements; Collaborative Practice Relationships

A. A dental therapist shall submit a signed affidavit to the Board affirming that:

1. The Collaborative Practice Agreement complies with all the requirements listed in A.R.S. § 32-1276.04.
2. The dental therapist is and will be continuously certified in basic life support, including healthcare provider level cardiopulmonary resuscitation and training in automated external defibrillator.

3. The dental therapist is in compliance with the continuing dental education requirements of this state.

B. Each dentist who enters into a Collaborative Practice Agreement shall be available telephonically or electronically during the business hours of the dental therapist to provide an appropriate level of contact, communication, and consultation.

C. A Collaborative Practice Agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the dental therapist.

D. A Collaborative Practice Agreement shall include a signed and dated statement from the dentist providing Direct Supervision, verifying the dental therapist's completion of 1000 hours of dental therapy clinical practice according to A.R.S. § 32-1276.04(B).

E. A Collaborative Practice Agreement shall be between one dentist and one dent

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

1. Identification of the rulemaking:

   The Arizona State Board of Dental Examiners ("Board") needs to amend its rules related to dental therapy license requirements.

   a. The conduct and its frequency of occurrence that the rule is designed to change:

      The Board needs to amend its rules to address dental therapy licenses, which was created by the Arizona State Legislature, and make other necessary changes to ensure the rules are clear, concise and consistent.

   b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

      The Board will *not* be compliant with a law passed and signed into effect in May 2017 – A.R.S. §§ 32-1201 et seq, more specifically A.R.S. §§ 32-1276 – 32-1276.08. The Board needs to allow individuals educated in dental therapy the ability to obtain a dental therapy license in order to treat patients, in Arizona, who need dental services that dental therapists provide.

   c. The estimated change in frequency of the targeted conduct expected from the rule change:

      There will be no change in the frequency of reporting dental therapy licenses.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

   Governor Ducey signed a bill into law in May 2017, which allows licensed dental therapist to practice in Arizona. The previous Board administration never created rules for this new law; therefore, the new law has not been fully implemented. There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. Thus, the economic impact is minimized.

/ / /
/ / /
/ / /

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners

1740 W. Adams St., Ste. 2470

Phoenix, AZ 85007

Telephone: (602) 542-4493

E-Mail: ryan.edmonson@dentalboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

The costs for a dental therapist license is the responsibility of the applicant. It is the individual's responsibility to obtain the required education and license to practice in the State of Arizona. The benefit of the new license increases access for rural areas of the state, which includes tribal communities. Additionally, this allows tribal communities to attract dental providers in their area and retain licensees.

5. Cost-benefit analysis:

   a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

      The Board is the only state agency affected by the rulemaking amendment and there will *not* be any costs, including the hiring of more personnel to manage the effects of the amendment. The benefits, as stated above, provides access to rural areas of the state where access to dental services can increase.

   b. Costs and benefits to political subdivisions directly affected by the rulemaking:

      N/A

   c. Costs and benefits to businesses directly affected by the rulemaking:

      No new costs will be incurred to businesses; this is a new type of dental license.

6. Impact on private and public employment:

N/A

7. Impact on small businesses:

   a. Identification of the small business subject to the rulemaking:

      The Board licensees, but this is no different than currently. There is no financial impact to small businesses other than dental businesses, but there are *no* new costs.

   b. Administrative and other costs required for compliance with the rulemaking:

      Negligible

   c. Description of methods that may be used to reduce the impact on small businesses:

      Minimal, if any, and only based on the cost to employers who pay for the licensee fees for its hired dental professionals.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

   No new costs will be incurred to individuals. In fact, the public in rural areas will benefit by having more access to care for dental services who may not currently have immediate access to this type of care.

9. Probable effects on state revenues:

   No new expenses are expected at this time. We cannot determine the probable effects on state revenues, because the Board does not know how many people will apply for a dental therapy license, nor can they presume to know.

10. Less intrusive or less costly alternative methods considered:

    The Board believes that by amending its rules this will be a benefit the dental community and the public they serve.

Gmail

Kristina Gomez <kristina.gomez@dentalboard.az.gov>

Exemption from Executive Order 2019-01

Emily Rajakovich <erajakovich@az.gov> Wed, Sep 25, 2019 at 11:56 AM
To: Ryan Edmonson <ryan.edmonson@dentalboard.az.gov>, Kristina Gomez <kristina.gomez@dentalboard.az.gov>
Cc: Gretchen Conger <gconger@az.gov>

Ryan
This email serves as an exemption from the rulemaking moratorium pursuant to Executive Order 2019-01. You may move forward with rulemaking for the items you have listed in your memo with the exception of a new fee for providing public records in an electronic format. You may create rules that allow the board to respond to public records requests with materials in an electronic format, but a new fee for this has been denied.

Please let me know what else I can do. Thank you for all your work here.

Emily Rajakovich
[Quoted text hidden]

Gmail

Kristina Gomez <kristina.gomez@dentalboard.az.gov>

Exemption from Executive Order 2019-01

Ryan Edmonson <ryan.edmonson@dentalboard.az.gov> Fri, Sep 27, 2019 at 10:59 AM
To: Emily Rajakovich <erajakovich@az.gov>
Cc: Kristina Gomez <kristina.gomez@dentalboard.az.gov>, Gretchen Conger <gconger@az.gov>

Thank you for your response and the approval.

Ryan Edmonson

Executive Director

Arizona State Board of Dental Examiners
1740 West Adams Street, Suite 2470, Phoenix, AZ 85007
P: 602.542.4493
C: 602.540.0341
E: ryan.edmonson@dentalboard.az.gov
W: https://dentalboard.az.gov/

[Quoted text hidden]

Douglas A. Ducey,
Governor

Arizona State Board of
Dental Examiners
"Protecting the Public's Health"

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W: https://dentalboard.az.gov

August 28, 2019

Emily Rajakovich, Director
Boards and Commissions
Office of the Arizona Governor
1700 W. Washington Street
Phoenix, AZ 85007

Sent via email to: erajakovich@az.gov

Re: Exemption Request: Adding Dental Therapy

Dear Ms. Rajakovich:

The Arizona State Board of Dental Examiners ("Board") respectfully requests an exemption from Executive Order ("EO") 2019-01. The Board needs to amend its rules to account for the newly created mid-level dental profession, Dental Therapists, which can be found in Arizona Revised Statutes §§ 32-1276 – 32-1276.05. House Bill 2235 passed through legislation on May 3, 2018 and Governor Ducey signed the bill into law on May 16, 2018. The bill became law 90 days later. In compliance with EO 2019-01, paragraph 3, the Board also needs to make changes to its rules to ensure that dental professionals are properly licensed and regulated, including: (1) amending requirements for continuing education related to tobacco cessation and chemical dependency, (2) ensuring that course credentials are sent directly to the Board from the issuing institution and (3) clarifying notices of complaints may be sent via email. In addition to other clarifying changes, the Board would like to amend its rules to account for advances in technology such as establishing a new fee to provide public documents in an electronic format.

Finally, the Board intends to remove outdated fees and regulatory requirements such as:

1. Removing fees associated with agendas and minutes of Board meetings as those documents are now available on the Board's website; and
2. Removing notarization requirements that are no longer necessary.

The rulemaking warrants approval because it satisfies six of the exemption justifications outlined in EO 2019-01. Paragraph 1(a) provides an exemption if the rulemaking will fulfill an objective related to job creation, economic development or economic expansion in this State. This rulemaking will ensure that the new profession of Dental Therapists is properly regulated, thereby promoting job creation and economic expansion in Arizona.

Paragraph 1(b) provides an exemption if the rulemaking will reduce a regulatory burden while achieving the same regulatory objective. This rulemaking will remove outdated fees and notarization requirements while clarifying what information is required to be licensed in one of the dental professions. Such clarification will ensure the public has notice of how dental professionals obtain and maintain their professional licenses. Thus, the same regulatory objective is achieved while reducing the regulatory burden.

Paragraph 1(c) provides an exemption if the rulemaking will prevent a significant threat to the public health, peace or safety. As mentioned above, the Board is tasked with regulating the new Dental Therapist profession to ensure Dental Therapists have obtained the necessary credentials and skills to safely administer specific dental treatments. Without definition or clarification in rule, there may be no support or successful enforcement of the new law. The profession may not be able to comply with the change to law pertaining to continuing education and the public may not be as well protected as a result. Thus, the rulemaking is necessary to prevent significant threat to the public.

Paragraph 1(f) provides an exemption if the rulemaking is necessary to comply with a state statutory requirement. Statutes require the Board to administer licenses for various dental professionals. These rules are necessary to provide clear notice to the public about how the Board issues various dental licenses. Thus, the rules are necessary to comply with state statutes.

Paragraph 1(i) provides an exemption if the rulemaking is necessary to address matters pertaining to the control, mitigation, or eradication of waste, fraud, or abuse within an agency or wasteful, fraudulent, or abusive activities perpetrated against an agency. As mentioned above, this rulemaking is necessary to ensure that the new profession of Dental Therapists is properly regulated. Moreover, the Board needs to amend its rules to ensure that licensees submit verified credentials to ensure that they have the necessary knowledge and skills to administer dental treatments. These rules will increase the understandability of the requirements related to obtaining and maintaining various dental licenses, thereby protecting the public and leading to a reduction in the resources the Board must expend in order to rectify an unintended consequence resulting from a misunderstanding of how the board issues licenses and processes complaints. Thus, wasteful activities are reduced, leading to the more effective regulation of dental professions and administration of the Board.

Paragraph 1(j) provides an exemption if the rulemaking will eliminate rules, which are antiquated, redundant, or otherwise no longer necessary for the operation of state government. As mentioned above, this rulemaking will remove unnecessary fees and licensing requirements.

Based on the foregoing justifications under Paragraphs 1(a) through 1(c), 1(f), 1(i), and 1(j) of EO 2019-01, the Board is requesting an exemption from the rulemaking moratorium and approval from the Governor's office to proceed with the rulemaking discussed above. Please feel free to contact me with any questions.

Sincerely,

Ryan P. Edmonson
Executive Director

Gmail Ryan Edmonson <ryan.edmonson@dentalboard.az.gov>

Re: Intermediary Request

1 message

Brian Norman <bcnorman@az.gov> Tue, Mar 22, 2022 at 10:53 AM
To: Ryan Edmonson <ryan.edmonson@dentalboard.az.gov>
Cc: Kristina Gomez <kristina.gomez@dentalboard.az.gov>, Yazmin Bustamante <yazmin.bustamante@dentalboard.az.gov>

Hi Ryan,

I apologize for the delay in getting back to you. Your request for intermediary permission to proceed with the dental therapy rulemaking process is approved. A secondary exemption from the 3:1 rule requirements is also approved due to the reasons stipulated in your original email.

Thank you,
Brian

On Tue, Mar 8, 2022 at 9:24 AM Ryan Edmonson <ryan.edmonson@dentalboard.az.gov> wrote:

> Brian,
>
> Thank you for meeting with staff, including myself, from the dental board. As discussed, the dental board has been on a long journey to write rules to conform with legislation that passed prior to my hire date. In fact, the rules that have now been written hadn't even started until Kristina and I were hired and found that a bill passed through legislation adding a mid-level dental professional in the State of Arizona. We received an exemption to the rule moratorium and began writing rules, with a rules committee, made up of board members, former board members and members of the public.
>
> The Board met in December and January to address the dental therapy rule project and voted to continue the rulemaking process by opening a docket with the AzSOS. In order to proceed, the Board is requesting the following:
>
> 1. Intermediary permission to proceed with the dental therapy rulemaking process in order to conform with the passage of the legislation from 2017/18 that provides for this mid-level dental professional.
> 2. A secondary exemption from the 3:1 new rule requirements. Prior to the Governor's 3:1 rule reform, the Legislature passed a bill that provided a mid-level dental profession. However, for reasons unknown, my predecessor did not begin the rulemaking process, and therefore, after taking up this process, the removal of three rules for every one new rule took effect. Additionally, if the dental therapy rules do not move forward, then the Board will continue to function with rules that do not conform with the Board's statutes. The Board believes that it is more important to offer this new profession and its job growth, by completion of the rulemaking process, than to search for rules to remove.
>
> We reached out to Trista with a similar request prior to her leaving her position. Thank you in advance for a prompt response.
>
> Respectfully,
>
> Ryan P. Edmonson
>
> Executive Director
>
> Arizona State Board of Dental Examiners
> 1740 West Adams Street, Suite 2470
>
> Phoenix, Arizona 85007
> P: 602.542.4493
> C: 602.540.0341
> E: ryan.edmonson@dentalboard.az.gov
> W: https://dentalboard.az.gov/

--
Brian Norman
Policy Advisor, Housing, Workforce & Commerce
Office of Arizona Governor Doug Ducey
bcnorman@az.gov | 602.653.6399

ARIZONA
STATE BOARD OF DENTAL EXAMINERS

Statutes & Rules

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ARIZONA REVISED STATUTES

Dentistry – Chapter 11
Article 1 – Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography,

including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

    (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

    (b) Imposition of restrictions on the scope of practice.

    (c) Imposition of peer review and professional education requirements.

    (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

    (a) Charges for services not rendered.

    (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

    (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

    (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

    (e) Any statement that is material to the claim and that the licensee knows is false or misleading.

    (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

    (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or

foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.

3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

16. Committing repeated irregularities in billing.

17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.

18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

    (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

    (b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

(a) Professionally incompetent.

(b) Engaging in unprofessional conduct.

(c) Impaired by drugs or alcohol.

(d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
D. A board member shall not serve more than two consecutive terms.
E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of $250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of $100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The

existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than $300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of

examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.

3. The number of examinations held and the dates of the examinations.

4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.

5. The facts with respect to prosecution of persons charged with violations of this chapter.

6. A full and complete statement of financial transactions of the board.

7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.

2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

(a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

(b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work

have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $300. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.

2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Meets the applicable requirements of section 32-1232.

6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. 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.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed $500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. Diagnosis and treatment planning.

4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.

3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:

(a) A recent photograph of the applicant.

(b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.

3. Successfully passes, both of the following:

(a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.

11. Change periodontal dressings.

12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.

17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.

21. Perform suturing and suture removal.

22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.

26. Provide referrals.

27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.

5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a

nonrefundable Arizona dental jurisprudence examination fee of $100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. 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.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does

not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA ADMINISTRATIVE CODE (Rules)
Title 4. Professions and Occupations
Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

"Application" means, for purposes of Article 3 only, forms designated as applications and all documents an additional information the Board requires to be submitted with an application.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard mineralized deposit attached to the teeth.

"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a recognized continuing dental education program.

"Deep sedation" is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.

"Documentation of attendance" means documents that contain the following information:
Name of sponsoring entity;
Course title;
Number of credit hours;
Name of speaker; and

Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Jurisdiction" means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

"Licensee" means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Moderate sedation" is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide (N2O/O2) as an inhalation analgesic.

"Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

"Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

"Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polish" means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only drug" does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval

for Continuing Education (AGDPACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1302 permit" means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1303 permit" means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with R4-11- 201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:1. Commit to a three-year, exclusive service period,

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under R4-11-201(A).
E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11- 203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant’s eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant’s documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11- 207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11- 20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
    a. The applicant's dental, dental hygiene, or denturist school, or
    b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
    a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
    b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
    c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30days old;
9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the selfinquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.

B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma;
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
3. Written verification of the applicant's work history, and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 30 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022(Supp. 22-3).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 30 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is $15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check::

1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental hygienist triennial renewal fee: $255;
4. Dental hygienist prorated initial license fee: $55;
5. Denturist triennial renewal fee: $233; and
6. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
    a. Dentists: $300;
    b. Dental Hygienists: $100; and
    c. Denturists: $250.
2. Licensure by credential fee:
    a. Dentists: $2,000; and
    b. Dental hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
    a. Failure after 10 days: $50; and
    b. Failure after 30 days: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1_. Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided paid by credit card on the Board's website or by money order or cashier's check:

1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification: $25;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists of Licensees in digital format: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R.

3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: $300 plus $25 for each additional location;
2. Section 1302 permit fee: $300 plus $25 for each additional location;
3. Section 1303 permit fee: $300 plus $25 for each additional location; and
4. Section 1304 permit fee: $300 plus $25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and
4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
E. A dentist of record shall:
1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32- 1289 at one time.
B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.
D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
    a. A minimum of four hours in medical emergencies; and
    b. A minimum of eight hours in at least two of the following areas:
        i. Pediatric or other special health care needs,
        ii. Preventative dentistry, or
        iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(E) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
    a. The placement of bands, crowns, and restorations;
    b. Dental dam application;
    c. Acid etch procedures; and
    d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;

9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp.17-3).

R4-11-802. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580,

effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904

renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended

by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,

2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
    a. Has established examination requirements and standards,
    b. Appraised an applicant's qualifications,
    c. Administered comprehensive examinations, and
    d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, denturist, or Restricted Permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or denturist shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or denturist shall include an affidavit affirming the Licensee's or denturist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or denturist shall include on the affidavit the Licensee's or denturist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or denturist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or denturist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:

1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or denturist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or denturist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or denturist may not be in compliance with this Article. A Licensee or denturist selected for audit shall provide the Board with Documentation

of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.
H. If a Licensee or denturist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies,

pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
    d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
    e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
    f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
    d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
    e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and

2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
    a. Dentist – 24 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level;
    b. b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
    c. Dental hygienist - 18 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
    d. Denturist – six Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
    a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
    b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;
    c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
    d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
    e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
        i. Only once for materials presented;
        ii. Only if the date of publication or original presentation was during the applicable renewal period; and
        iii. One Credit Hour for each hour of preparation, writing, and presentation; or

f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.

B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists no more than 21 hours;
2. Dental therapists, no more than 18 horus;
3. Dental hygienists, no more than 15 hours;
4. Denturists, no more than nine hours;
5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
6. Retired denturists, no more than two hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
        vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
    a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
        i. Emergency Drugs;
        ii. Electrocardiograph monitor;
        iii. Pulse oximeter;
        iv. Cardiac defibrillator or automated external defibrillator;
        v. Positive pressure oxygen and supplemental oxygen;
        vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
        vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
        viii. Endotracheal tubes and appropriate connectors;
        ix. Magill forceps;
        x. Oropharyngeal and nasopharyngeal airways;
        xi. Auxiliary lighting;

xii. Stethoscope; and
xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    b. Pediatric advanced life support in a practice treating pediatric patients; or
    c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:

1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
    a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
    b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
    c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications; or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);

b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:

1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
4. A list of all medications given, with dosage and time intervals, and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and

8. Time of discharge and status, including name of escort.

F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.

H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 Permit holder may also administer parenteral sedation.
2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.

B. To obtain or renew a Section 1302 Permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
      i. Emergency Drugs;
      ii. Positive pressure oxygen and supplemental oxygen;
      iii. Stethoscope;
      iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      v. Oropharyngeal and nasopharyngeal airways;
      vi. Pulse oximeter;
      vii. Auxiliary lighting;
      viii. Blood pressure monitoring device; and
      ix. Cardiac defibrillator or automated external defibrillator; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current course completion confirmation in cardiopulmonary resuscitation health care provider level;
      ii. Is present during the parenteral sedation procedure; and
      iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions:

1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
   a. Sixty didactic hours of basic parenteral sedation to include:
      i. Physical evaluation;
      ii. Management of medical emergencies;
      iii. The importance of and techniques for maintaining proper documentation; and
      iv. Monitoring and the use of monitoring equipment; and
   b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications, or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);
    b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
    c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
    d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
    e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
    f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
    a. Pass. Successful completion of the onsite evaluation;
    b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
    c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
    d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
    e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:

1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
   1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
   2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
      a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
         i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
         ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
      b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the

combination does not exceed Minimal Sedation.

B. To obtain or renew a Section 1303 Permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
        a. Contains the following properly operating equipment and supplies during the provision of sedation:
            i. Emergency Drugs;
            ii. Cardiac defibrillator or automated external defibrillator;
            iii. Positive pressure oxygen and supplemental oxygen;
            iv. Stethoscope;
            v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
            vi. Pulse oximeter;
            vii. Blood pressure monitoring device; and
            viii. Auxiliary lighting; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
            i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
            ii. Is present during the Oral Sedation procedure; and
            iii. After the procedure, monitors the patient until discharge;
    3. Hold a valid license to practice dentistry in this state;
    4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
    5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
        a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Pediatric advanced life support in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
    1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
    2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
        a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or

3. Provide proof of participation in 30 clock hours of Board- recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
   a. Training in basic Oral Sedation,
   b. Pharmacology,
   c. Physical evaluation,
   d. Management of medical emergencies,
   e. The importance of and techniques for maintaining proper documentation, and
   f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. For initial applications, two dentists who are Board members, or Board designees.
      b. For renewal applications, one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
      b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
      c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
      d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
      e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
   3. The evaluation team shall recommend one of the following:
      a. Pass. Successful completion of the onsite evaluation;
      b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
      c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
      d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
   4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
   5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:
      a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and

in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
b. Pre-operative and post-operative blood pressure;
c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
d. List of all medications given, including dosage and time intervals;
e. Patient's weight;
f. Consent form;
g. Special notes, such as, nothing by mouth or last intake of food or water; and
h. Time of discharge and status, including name of escort; and
2. May include the following entries:
a. Pre-operative and post-operative electrocardiograph report; and
b. Intra-operative blood pressures.

F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.

G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 Permit holder has completed course- work within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients;
c. A recognized continuing education course in advanced airway management;
3. The Section 1303 Permit holder ensures that:
a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guide- lines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
    1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
    2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
    3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
        a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
            i. Emergency drugs;
            ii. Electrocardiograph monitor;
            iii. Pulse oximeter;
            iv. Cardiac defibrillator or automated external defibrillator (AED);
            v. Positive pressure oxygen and supplemental continuous flow oxygen;
            vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
            vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
            viii. Endotracheal tubes and appropriate connectors;
            ix. Magill forceps;
            x. Oropharyngeal and nasopharyngeal airways;
            xi. Auxiliary lighting;
            xii. Stethoscope; and
            xiii. Blood pressure monitoring device; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
    3. Hold a valid license to practice dentistry in this state; and
    4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another

agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation; or
b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
4. A list of all medications given, with dosage and time intervals and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
    1. The program shall include instruction in the following subject areas:
        a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
        b. Physiological and psychological risks for the use of various modalities of pain control;
        c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
        d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
        e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
    2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
        a. Be the same for all dentists, whether general practitioners or specialists; and
        b. Include each subject area listed in subsection (A)(1).
    3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. General anesthesia,
        b. Parenteral sedation,
        c. Physical evaluation,
        d. Medical emergencies,
        e. Monitoring and use of monitoring equipment, or
        f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management;
    3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
    4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. Oral sedation,
        b. Physical evaluation,
        c. Medical emergencies,
        d. Monitoring and use of monitoring equipment, or
        e. Pharmacology of oral sedation drugs and non-drug substances; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        c. Pediatric advanced life support (PALS);
        d. A recognized continuing education course in advanced airway management; and
    3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
    1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11- 1306;
    2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
    3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
    4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
B. To renew a Section 1304 permit, the permit holder shall:
    1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
    2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
   1. Date of issuance;
   2. Name and address of the patient to whom the prescription is issued;
   3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
   4. Name and address of the dentist prescribing the drug; and
   5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp.05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:
   1. The dentist's name, address, and telephone number;
   2. The serial number;
   3. The date the drug or device is dispensed;
   4. The patient's name;
   5. Name, strength, and quantity of drug or name and quantity of device dispensed;
   6. The name of the drug or device manufacturer or distributor;
   7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
   8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
   1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
      a. A patient's allergies,
      b. Incompatibilities with a patient's currently taken medications,
      c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
      d. The frequency of refills;
   2. Verify that the dosage is within proper limits;
   3. Interpret the prescription order;
   4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
   5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
   6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
   7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:
   1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
   2. Sequentially file orders separately from patient records, as follows:
      a. File Schedule II drug orders separately from all other prescription orders;
      b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
      c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
   3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
   4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
   5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:

1. Purchase records of all drugs and devices for three years from the date purchased; and
2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
   1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
   2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
   3. Shall maintain the inventory for three years from the inventory date;
   4. May use one inventory book for all controlled substances;
   5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
   6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
   1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
   2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
   3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
   1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
   2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
   3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.

B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing

the Board the following information:

1. A completed registration form that includes the following information:
   a. The dentist's name and dental license number;
   b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
   c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:
   1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
      a. A formal interview is scheduled,
      b. The complaint is tabled,
      c. A postponement or continuance is granted, and
      d. A subpoena, notice, or order is issued.
   2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
   3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:
   1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
      a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
      b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
   2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
   1. Is made in writing,
   2. States the reason for the postponement, and
   3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
   1. Review and either deny or approve the request for postponement; and
   2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
   1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
   2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
   3. Accident or surprise which could not have been prevented by ordinary prudence;
   4. Excessive or insufficient penalties;
   5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
   6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
   7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
   8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:
   1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
   2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Articles, Parts, and Sections Affected **Rulemaking Action**

R4-11-101	Amend
R4-11-201	Amend
R4-11-202	Amend
R4-11-203	Amend
R4-11-206	New Section
R4-11-301	Amend
R4-11-303	Amend
R4-11-401	Amend
R4-11-403	Amend
R4-11-701	Amend
R4-11-702	Amend
R4-11-1210	New Section
R4-11-1502	Amend
R4-11-1503	Amend
Article 16	New Article
R4-11-1601	New Section
R4-11-1602	New Section
R4-11-1603	New Section
R4-11-1604	New Section

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

Authorizing statute: A.R.S. § 32-1207

Implementing statutes: A.R.S. §§ 32-1201 et seq.

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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. 1230, June 3, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 1173, June 3, 2022

Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 2631, October 7, 2022

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

Name:	Ryan Edmonson, Executive Director
Address:	Arizona State Board of Dental Examiners 1740 W. Adams St., Ste. 2470 Phoenix, AZ 85007
Telephone:	(602) 542-4493
E-Mail:	ryan.edmonson@dentalboard.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Board needs to amend its rules to address Dental Therapists and make other necessary changes to ensure the rules are clear, concise, and consistent.

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:
No study was reviewed.

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:

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. Thus, the economic impact is minimized.

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

There were no changes between the supplemental proposed rulemaking and the final rulemaking.

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

The Board received a letter from the Inter Tribal Association of Arizona dated July 25, 2022, requesting the Board adopt language clarifying that dental therapy services may be provided on tribal lands. However, in consultation with the Board's Assistant Attorney General, the Board determined that such language was already addressed in federal law and it is not necessary or appropriate to address that language in these rules.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None.

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 Board issues general permits to licensees who meet the criteria established in statute and rule.

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:

Not applicable.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the

agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

ARTICLE 2. LICENSURE BY CREDENTIAL

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

ARTICLE 4. FEES

ARTICLE 7. DENTAL ASSISTANTS

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTIONS

R4-11-1502. Dental Consultant Qualifications

R4-11-1503. Initial Complaint Review

ARTICLE 16. ~~EXPIRED~~ DENTAL THERAPISTS

R4-11-1601. ~~Expired~~ Duties and Qualifications

R4-11-1602. Limitation on Number Supervised

R4-11-1603. Dental Therapy Consultants

R4-11-1604. Written Collaborative Practice Agreements; Collaborative Practice Relationships

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide ~~(N2O)~~ and oxygen ~~(O2)~~ with or without ~~local anesthesia~~ Local Anesthesia.

~~"Application" means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.~~

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard, mineralized deposit attached to the teeth.

~~"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.~~

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental, dental therapy, or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

~~"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.~~

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a ~~recognized continuing dental education~~ Recognized Continuing Dental Education program.

"Deep sedation" is a ~~drug-induced~~ Drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

~~"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).~~

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

~~"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.~~

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental therapist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

~~"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.~~

"Documentation of attendance" means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of ~~credit hours~~ Credit Hours;

Name of speaker; and

Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental, dental therapy, or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival ~~(gum)~~ sulcus ~~(crevice)~~ along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a ~~drug-induced~~ Drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or ~~drug-induced~~ Drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

~~"Jurisdiction" means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.~~

"Licensee" means a dentist, dental therapist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic ~~drug~~ Drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to

light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the ~~drugs~~ Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Mobile dental permit holder" means a Licensee or denturist who holds a mobile permit under R4-11-1301, R4-11-1302, or R4-11-1303.

"Moderate sedation" is a ~~drug-induced~~ Drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The ~~drugs~~ Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a ~~drug~~ Drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide ~~(N2O/O2)~~ used as an inhalation analgesic.

~~"Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.~~

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a ~~drug~~ Drug or ~~non-drug~~ non-Drug substance or combination inhalation and enterally administered ~~drug~~ Drug or ~~non-drug~~ non-Drug substance in a dental office or dental clinic to achieve ~~minimal~~ Minimal Sedation or ~~moderate sedation~~ Moderate Sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the ~~drug~~ Drug bypasses the gastrointestinal tract.

~~"Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.~~

~~"Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.~~

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the ~~epithelial attachment~~ Epithelial Attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

~~"Polish"~~ "Polishing" means~~, for the purposes of A.R.S. § 32-1291(B) only,~~ a procedure limited to the removal of ~~plaque~~ Plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and ~~polishing~~

Polishing agent. A ~~licensee~~ Licensee or dental assistant shall not represent that this procedure alone constitutes an oral ~~prophylaxis~~ Prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only ~~drug~~ Drug" does not include a ~~controlled substance~~ Controlled Substance but does include:

Any ~~drug~~ Drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any ~~drug~~ Drug that is limited by an approved new ~~drug~~ Drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful ~~drug~~ Drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any ~~drug~~ Drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances ~~used in relation to dental hygiene procedures~~ that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a ~~scaling~~ Scaling and ~~polishing~~ Polishing procedure performed on patients with healthy tissues to remove coronal ~~plaque~~ Plaque, ~~calculus~~ Calculus, and stains.

~~"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.~~

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school ~~as defined in A.R.S. § 32-1201(18)~~, recognized dental therapy school, recognized dental hygiene school ~~as defined in A.R.S. § 32-1201(17)~~, or recognized denturist school ~~as defined in A.R.S. § 32-1201(19)~~, or sponsored by a national or state dental, dental therapy, dental hygiene, or denturist association, American Dental Association~~,~~ Continuing Education Recognition Program ~~(ADA CERP)~~ or Academy of General Dentistry, Program Approval for Continuing Education ~~(AGD PACE)~~ approved provider, dental, dental therapy, dental hygiene, or denturist ~~study club~~ Study Club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237, or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental therapist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with ~~calculus~~ Calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove ~~plaque~~ Plaque, ~~calculus~~ Calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer ~~general anesthesia~~ General Anesthesia and ~~deep sedation~~ Deep Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Section 1302 permit" means a permit to administer ~~parenteral sedation~~ Parenteral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Section 1303 permit" means a permit to administer ~~oral sedation~~ Oral Sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist ~~(CRNA)~~ under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental therapists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240~~(A)~~, 32-1276.07, or 32-1292.01~~(A)~~, the Board shall ensure that the applicant has passed the clinical examination of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation. ~~of another state, United States territory, District of Columbia or a regional testing agency~~ Satisfactory completion of the clinical examination may be demonstrated by ~~one of the following:~~

1. ~~Certified~~ certified documentation, sent directly from another state, United States territory, District of Columbia or a ~~regional~~ testing agency that meets the requirements of A.R.S. §§ 32-1233(2) for dentists, or 32-1276.01(B)(3)(a) for dental therapists, or 32-1285(2) for dental hygienists, notwithstanding each respective statute's timing stipulation, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or ~~regional~~ testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score~~; or~~

2. ~~Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score~~.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240~~(A)~~ shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240~~(A)(1)~~ shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the ~~American Dental Association~~ Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; ~~and~~
4. Provide evidence regarding the clinical examination by complying with ~~one of the subsections in~~ R4-11-201(A)~~(1).~~; and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

~~**C.** A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional~~

~~testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.~~

~~D.~~**C.** For any application submitted under A.R.S. § 32-1240~~(A)~~, the Board may request additional clarifying evidence required under ~~the applicable subsection in~~ R4-11-201(A)~~(1)~~.

~~E.~~**D.** An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas ~~(HPSAs)~~; or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

~~F.~~**E.** An applicant for dental licensure by credential who works in areas or facilities described in subsection ~~(E)~~ (D) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a ~~licensee~~ Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

~~G.~~**F.** A ~~licensee's~~ Licensee's failure to comply with the requirements in subsection ~~(F)~~ (E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01~~(A)~~ shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01~~(A)(1)~~ shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the ~~American Dental Association~~ Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; ~~and~~
4. Provide evidence regarding the clinical examination by complying with ~~one of the subsections in~~ R4-11-201(A)~~(1).~~; and
5. Pass the Arizona jurisprudence examination with a minimum score of 75%.

~~**C.** A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of~~

~~Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.~~

~~D.~~ C. For any application submitted under A.R.S. § 32-1292.01~~(A)~~, the Board may request additional clarifying evidence as required under ~~the applicable subsection in~~ R4-11-201(A).

~~E.~~D. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas ~~(HPSAs)~~; or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

~~F.~~E. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection ~~(E)~~ (D) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a ~~licensee~~ Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

~~G.~~F. A ~~licensee's~~ Licensee's failure to comply with the requirements in ~~R4-11-203(F)~~ R4-11-203(E) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

R4-11-206. ~~Repealed~~ Dental Therapist Licensure by Credential; Application

A. A dental therapist applying under A.R.S. § 32-1276.07 shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental therapist applying under A.R.S. § 32-1276.07 shall:

1. Have a current dental therapy license in another state, territory or district of the United States with substantially the same scope of practice as defined in A.R.S. § 32-1276.03;
2. Submit a written affidavit affirming that the applicant has practiced as a dental therapist for a minimum of 3000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental therapy practice includes experience as a dental therapy educator at a dental program accredited by the Commission on Dental Accreditation or another post-secondary dental education program accrediting agency recognized by the U.S. Department of Education, or employment as a dental therapist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental therapy education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence showing that five years or more before applying for licensure under this section, the applicant completed the clinical examination by complying with R4-11-201(A);
5. Submit official transcripts to the Board directly from a recognized dental therapy school as defined by A.R.S. § 32-1201(21) or an approved third party showing a degree was conferred to the applicant; and

6. Not be required to obtain an Arizona dental hygienist license, if the dental therapist submits one of the following:

a. Certified documentation of a current or past dental hygiene license sent directly from the applicable state, United States territory, District of Columbia to the Board; or

b. Official transcripts sent to the Board directly from a recognized dental hygiene school as defined by A.R.S. § 32-1201(19) or an approved third party showing a degree was conferred to the applicant; or

c. A written affidavit from a recognized dental therapy school as defined in A.R.S. § 32-1201(21) affirming that all dental hygiene procedures defined in A.R.S. § 32-1281 were part of the education the applicant received.

C. For any application submitted under A.R.S. § 32-1276.07, the Board may request additional clarifying evidence required under R4-11-201(A).

D. If an applicant meets all the requirements set forth in this rule except that their current dental therapy license is from a state, territory, or district of the United States that does not include one or more of the following procedures in its legally defined scope, then the applicant must provide evidence of competency before being granted a dental therapy license by credential:

1. Fabricating soft occlusal guards;

2. Administering Nitrous Oxide Analgesia;

3. Performing nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal;

4. Suturing; or

5. Placing space maintainers.

E. The board will accept the any of following as evidence of competency in the aforementioned procedures:

1. A certificate or credential in the procedure(s) issued by a state licensing jurisdiction; or

2. A signed affidavit from a recognized dental therapy school, recognized dental hygiene school, or recognized dental school, affirming that the applicant successfully completed academic coursework that included both theory and supervised clinical practice in the procedure(s).

F. Subject to A.R.S. § 32-1276.04, an applicant for licensure under this section shall pay the fee prescribed in A.R.S. § 32-1276.07, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas; or

2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

G. An applicant for dental therapist licensure by credential who works in areas or facilities described in subsection (F) shall:

1. Commit to a three-year, exclusive service period,

2. File a copy of a contract or employment verification statement with the Board, and

3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

H. A Licensee's failure to comply with the requirements in subsection (G) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
   a. The applicant's dental, dental therapy, dental hygiene, or denturist school, or
   b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, a dental, dental therapy, and dental hygiene license ~~applicants~~ applicant shall provide proof of successfully completing a clinical examination by submitting:
   a. If applying for dental licensure by examination, a copy of the certificate or scorecard sent to the Board directly from ~~the Western Regional Examining Board~~ a clinical examination administered by a state or testing agency that meets the requirements of A.R.S. § 32-1233(2), indicating that the applicant passed a state or regional testing agency ~~the Western Regional Examining~~

~~Board~~ examination that meets the requirements of A.R.S. § 32-1233(2) within the five years immediately before the date the application is filed with the Board;

b. If applying for dental therapy licensure by examination, a copy of the certificate or scorecard sent to the Board directly from a clinical examination administered by a state, United States territory, District of Columbia or testing agency that meets the requirements of A.R.S. § 32-1276.01(B)(3)(a). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board. The application must also include the applicant's Arizona dental hygiene license number;

~~b.~~c. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard sent to the Board directly from ~~the Western Regional Examining Board or an Arizona Board approved~~ a clinical examination administered by a state, United States territory, District of Columbia or ~~regional~~ testing agency that meets the requirements of A.R.S. § 32-1285(2). The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; ~~or~~

~~c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;~~

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official scorecard sent directly from the National Board examination to the Board;

6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for ~~CPR~~ cardiopulmonary resuscitation training and certification as the American Red Cross or American Heart Association;

7. A license or certification verification from any other jurisdiction–in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;

8. If an ~~a dental or dental hygiene~~ applicant has been licensed or certified in another jurisdiction ~~for more than six months~~, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 calendar days old;

~~9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;~~

~~10.~~9. If the applicant is in the military or employed by the United States government, a letter ~~of endorsement~~ sent to the Board directly from the applicant's commanding officer or supervisor ~~that confirms~~ verifying the ~~applicant's~~ applicant is licensed or

certified by the military ~~service~~ or United States government ~~employment record~~; and

~~11.~~10. The jurisprudence examination fee paid by a method authorized by law.

B. The Board may request that an applicant provide:

1. An official copy of the applicant's dental, dental therapy, dental hygiene, or denturist school diploma from the issuing institution;~~,~~
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names~~,~~;
3. Written verification of the applicant's work history~~,~~; and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within ~~24~~ 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within ~~14~~ 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental therapy license, dental hygiene license, dental consultant license, denturist certificate, ~~drug dispensing registration, business entity~~ Business Entity registration, mobile dental facility or portable dental unit permit,

the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.

2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The ~~24~~ 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.

3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete ~~24~~ 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within ~~10~~ 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.

4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.

5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: ~~24~~ 30 calendar days.

2. Substantive review time-frame: 90 calendar days.

3. Overall time-frame: ~~114~~ 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a ~~retired~~ Retired Licensee or ~~disabled~~ Disabled Licensee ~~dentist or dental hygienist~~ is $15 and shall be paid by a method authorized by law.

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees paid by a method authorized by law:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental therapist triennial renewal fee: $375;
4. Dental therapist prorated initial license fee: $80;
5. Dental hygienist triennial renewal fee: $255;
~~4.~~6. Dental hygienist prorated initial license fee: $55;
~~5.~~7. Denturist triennial renewal fee: $233; and
~~6.~~8. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the following fees paid by a method authorized by law:

1. Jurisprudence examination fee:
    a. Dentists: $300;
    b. Dental therapists: $200;
    c. Dental ~~Hygienists~~ hygienists: $100; and
    ~~c.~~d. Denturists: $250.
2. Licensure by credential fee:
    a. Dentists: $2,000; and
    b. Dental therapists: $1,500;
    c. Dental ~~Hygienists~~ hygienists: $1,000.

3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental therapist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).

4. Penalty for a dentist, dental therapist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:

   a. Failure after 10 days: $50; and

   b. Failure after 30 days: $100.

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the ~~direct supervision~~ Direct Supervision of a licensed dentist or a licensed dental therapist:

1. Place dental material into a patient's mouth in response to a licensed dentist's or licensed dental therapist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
    a. The placement of bands, crowns, and restorations;
    b. Dental dam application;
    c. Acid etch procedures; and
    d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;
9. Apply topical fluorides;
10. Take final digital impressions for any activating orthodontic appliance, fixed, or removable prosthesis;

~~10.~~11. Prepare a patient for ~~nitrous oxide and oxygen analgesia~~ Nitrous Oxide Analgesia administration upon the direct instruction and presence of a dentist or licensed dental therapist; or

~~11.~~12. Observe a patient during ~~nitrous oxide and oxygen analgesia~~ Nitrous Oxide Analgesia as instructed by the dentist or licensed dental therapist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist or a licensed dental therapist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and ~~plaque~~ Plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental therapists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions, other than digital impressions, for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An ~~irreversible procedure~~ Irreversible Procedure.

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1210. Dental Therapists

Dental therapists shall complete 54 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 31 Credit Hours in any one or more of the following areas: Dental and medical health, dental therapy services, dental therapy treatment planning, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry;
2. No more than 14 Credit Hours in any one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in infectious diseases or infectious disease control;
4. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
5. At least three Credit Hours in any one or more of the following areas: ethics, risk management, chemical dependency, tobacco cessation, or Arizona dental jurisprudence.

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1502. Dental Consultant Qualifications

A dentist, dental therapist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. The Board ~~personnel~~ shall notify the ~~complainant and~~ ~~licensee~~ Licensee, ~~certificate holder~~ denturist, ~~business entity~~ Business Entity or ~~mobile dental permit holder~~ Mobile Dental Permit Holder by certified U.S. Mail when the following occurs:
   a. A formal interview is scheduled, and
   b. ~~The complaint is tabled,~~
   ~~c.~~ ~~A postponement or continuance is granted, and~~
   ~~d.~~ A subpoena, notice, or order is issued.
2. The Board shall notify the Licensee, denturist, Business Entity, or Mobile Dental Permit Holder by U.S. mail or email when the following occurs:
   a. The complaint is tabled, and
   b. The Board grants a postponement or continuance.

~~2.~~3. Board ~~personnel~~ shall provide the ~~licensee~~ Licensee, ~~certificate holder~~ denturist, ~~business entity~~ Business Entity, or ~~mobile dental permit holder~~ Mobile Dental Permit Holder with a copy of the complaint.

~~3.~~4. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to ~~clinical evaluation~~ Clinical Evaluation are:

1. Except as provided in subsection (B)(1)(a), the ~~president's designee~~ President's Designee shall appoint one or more dental consultants to perform a ~~clinical evaluation~~ Clinical Evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
   a. If the complaint involves a dental hygienist, denturist, dental therapist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the ~~president's designee~~ President's Designee shall appoint a dental consultant from that area of practice or specialty.
   b. The Board shall not disclose the identity of the ~~licensee~~ Licensee to a dental consultant performing a ~~clinical examination~~ Clinical Evaluation before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a ~~clinical evaluation~~ Clinical Evaluation report. The ~~president's designee~~ President's Designee shall provide a copy of the ~~clinical evaluation~~ Clinical Evaluation report to the ~~licensee~~ Licensee or ~~certificate holder~~ denturist. The ~~licensee~~ Licensee or ~~certificate holder~~ denturist may submit a written response to the ~~clinical evaluation~~ Clinical Evaluation report.

ARTICLE 16. ~~EXPIRED~~ DENTAL THERAPISTS

R4-11-1601. ~~Expired~~ Duties and Qualifications

A. A dental therapist may perform a procedure not specifically authorized by A.R.S. § 32-1276.03 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental therapist has received training by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school, as defined under A.R.S. § 32-1201, to perform the procedure in a safe manner; and
3. The procedure is performed under the Direct Supervision of, or according to, a written collaborative practice agreement with a licensed dentist.

B. A dental therapist may administer Nitrous Oxide Analgesia as authorized by A.R.S. § 32-1276.03(B)(12) if the dental therapist submits proof directly from an issuing institution of completing courses in the administration of Nitrous Oxide Analgesia offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

C. A dental therapist may perform suturing and suture removal as authorized by A.R.S. § 32-1276.03(B)(21) if the dental therapist submits proof directly from an issuing institution of completing courses in suturing and suture removal offered by a recognized dental school, recognized dental therapy school, or recognized dental hygiene school, as defined under A.R.S. § 32-1201, that include both theory and supervised clinical practice in the procedures.

D. A dental therapist may perform an Irreversible Procedure only if it is specifically authorized by A.R.S. § 32-1276.03 or meets the conditions of R4-11-1601(A).

R4-11-1602. Limitation on Number Supervised

A dentist shall not provide direct supervision for more than three dental therapists while the dental therapists are providing services or performing procedures under A.R.S. § 32-1276.03 or R4-11-1601.

R4-11-1603. Dental Therapy Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental therapy consultants may:

1. Participate in Board-related procedures, including a Clinical Evaluation, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's or denturist's quality of care; and
2. Participate in onsite office evaluations for infection control, as part of a team.

R4-11-1604. Written Collaborative Practice Agreements; Collaborative Practice Relationships

A. A dental therapist shall submit a signed affidavit to the Board affirming that:

1. The Collaborative Practice Agreement complies with all the requirements listed in A.R.S. § 32-1276.04.
2. The dental therapist is and will be continuously certified in basic life support, including healthcare provider level cardiopulmonary resuscitation and training in automated external defibrillator.

3. The dental therapist is in compliance with the continuing dental education requirements of this state.

B. Each dentist who enters into a Collaborative Practice Agreement shall be available telephonically or electronically during the business hours of the dental therapist to provide an appropriate level of contact, communication, and consultation.

C. A Collaborative Practice Agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the dental therapist.

D. A Collaborative Practice Agreement shall include a signed and dated statement from the dentist providing Direct Supervision, verifying the dental therapist's completion of 1000 hours of dental therapy clinical practice according to A.R.S. § 32-1276.04(B).

E. A Collaborative Practice Agreement shall be between one dentist and one dent

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

1. Identification of the rulemaking:

   The Arizona State Board of Dental Examiners ("Board") needs to amend its rules related to dental therapy license requirements.

   a. The conduct and its frequency of occurrence that the rule is designed to change:

      The Board needs to amend its rules to address dental therapy licenses, which was created by the Arizona State Legislature, and make other necessary changes to ensure the rules are clear, concise and consistent.

   b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

      The Board will *not* be compliant with a law passed and signed into effect in May 2017 – A.R.S. §§ 32-1201 et seq, more specifically A.R.S. §§ 32-1276 – 32-1276.08. The Board needs to allow individuals educated in dental therapy the ability to obtain a dental therapy license in order to treat patients, in Arizona, who need dental services that dental therapists provide.

   c. The estimated change in frequency of the targeted conduct expected from the rule change:

      There will be no change in the frequency of reporting dental therapy licenses.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

   Governor Ducey signed a bill into law in May 2017, which allows licensed dental therapist to practice in Arizona. The previous Board administration never created rules for this new law; therefore, the new law has not been fully implemented. There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. Thus, the economic impact is minimized.

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/ / /

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Ryan Edmonson, Executive Director

Address: Arizona State Board of Dental Examiners

1740 W. Adams St., Ste. 2470

Phoenix, AZ 85007

Telephone: (602) 542-4493

E-Mail: ryan.edmonson@dentalboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

The costs for a dental therapist license is the responsibility of the applicant. It is the individual's responsibility to obtain the required education and license to practice in the State of Arizona. The benefit of the new license increases access for rural areas of the state, which includes tribal communities. Additionally, this allows tribal communities to attract dental providers in their area and retain licensees.

5. Cost-benefit analysis:

   a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

      The Board is the only state agency affected by the rulemaking amendment and there will *not* be any costs, including the hiring of more personnel to manage the effects of the amendment. The benefits, as stated above, provides access to rural areas of the state where access to dental services can increase.

   b. Costs and benefits to political subdivisions directly affected by the rulemaking:

      N/A

   c. Costs and benefits to businesses directly affected by the rulemaking:

      No new costs will be incurred to businesses; this is a new type of dental license.

6. Impact on private and public employment:

N/A

7. Impact on small businesses:

   a. Identification of the small business subject to the rulemaking:

      The Board licensees, but this is no different than currently. There is no financial impact to small businesses other than dental businesses, but there are *no* new costs.

   b. Administrative and other costs required for compliance with the rulemaking:

      Negligible

   c. Description of methods that may be used to reduce the impact on small businesses:

      Minimal, if any, and only based on the cost to employers who pay for the licensee fees for its hired dental professionals.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

   No new costs will be incurred to individuals. In fact, the public in rural areas will benefit by having more access to care for dental services who may not currently have immediate access to this type of care.

9. Probable effects on state revenues:

   No new expenses are expected at this time. We cannot determine the probable effects on state revenues, because the Board does not know how many people will apply for a dental therapy license, nor can they presume to know.

10. Less intrusive or less costly alternative methods considered:

    The Board believes that by amending its rules this will be a benefit the dental community and the public they serve.

ARIZONA
STATE BOARD OF DENTAL EXAMINERS

Statutes & Rules

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Dentistry – Chapter 11
Article 1 – Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.

2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

3. "Board" means the state board of dental examiners.

4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.

5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.

10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography,

including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.

12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

    (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

    (b) Imposition of restrictions on the scope of practice.

    (c) Imposition of peer review and professional education requirements.

    (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:

    (a) Charges for services not rendered.

    (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.

    (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.

    (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.

    (e) Any statement that is material to the claim and that the licensee knows is false or misleading.

    (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.

    (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

16. "Licensed" means licensed pursuant to this chapter.

17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.

18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.

21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.

22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or

foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.

3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.

4. Committing gross malpractice or repeated acts constituting malpractice.

5. Acting or assuming to act as a member of the board if this is not true.

6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.

11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.

12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

16. Committing repeated irregularities in billing.

17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.

18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

20. Committing the following advertising practices:

    (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

    (b) Advertising in any manner that tends to deceive or defraud the public.

21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.

22. Failing to comply with a board order, including an order of censure or probation.

23. Failing to comply with a board subpoena in a timely manner.

24. Failing or refusing to maintain adequate patient records.

25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.

26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

(a) Professionally incompetent.

(b) Engaging in unprofessional conduct.

(c) Impaired by drugs or alcohol.

(d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
D. A board member shall not serve more than two consecutive terms.
E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of $250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of $100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The

existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than $300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of

examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.

2. The number of licenses issued during the preceding year and to whom issued.

3. The number of examinations held and the dates of the examinations.

4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.

5. The facts with respect to prosecution of persons charged with violations of this chapter.

6. A full and complete statement of financial transactions of the board.

7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.

2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.

2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.

3. The names and addresses of the officers and directors of the business entity.

4. A registration fee prescribed by the board in rule.

C. A business entity must file a separate registration application and pay a fee for each branch office in this state.

D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.

2. In the officers or directors of the business entity.

3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.

F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:

1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.

2. Disposing of unclaimed dental records.

3. The timely response to requests by patients for copies of their records.

G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.

H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than $2,000 for each violation.

4. Enter a decree of censure.

5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.

6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.

I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

J. This section does not apply to:

1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.

4. A facility regulated by the federal government or a state, district or territory of the United States.

5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.

K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:

1. Owned by a dentist who is licensed pursuant to this chapter.

2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

(a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

(b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work

have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of $300. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.

2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Meets the applicable requirements of section 32-1232.

6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.

7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of $50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. 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.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed $500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.

2. Order disciplinary action pursuant to section 32-1263.01, subsection A.

3. Enter into a consent agreement with the licensee for disciplinary action.

4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.

5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. Diagnosis and treatment planning.

4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.

2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.

3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.

4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.

2. Fails to obey a summons or other order regularly and properly issued by the board.

3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.

2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.

2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.

3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.

2. Verify under oath that all statements in the application are true to the applicant's knowledge.

3. Enclose with the application:

(a) A recent photograph of the applicant.

(b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.

2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.

3. Successfully passes, both of the following:

(a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.

(b) The Arizona dental jurisprudence examination.

4. Is not subject to any grounds for denial of the application under this chapter.

5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.

6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to $100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.

2. Perform comprehensive charting of the oral cavity.

3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.

4. Expose and process dental radiographic images.

5. Perform dental prophylaxis, scaling, root planing and polishing procedures.

6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.

7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.

8. Perform pulp vitality testing.

9. Apply desensitizing medicaments or resins.

10. Fabricate athletic mouth guards and soft occlusal guards.

11. Change periodontal dressings.

12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.

14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.

15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.

16. Prepare and place direct restorations in primary and permanent teeth.

17. Fabricate and place single-tooth temporary crowns.

18. Prepare and place preformed crowns on primary teeth.

19. Perform indirect and direct pulp capping on permanent teeth.

20. Perform indirect pulp capping on primary teeth.

21. Perform suturing and suture removal.

22. Provide minor adjustments and repairs on removable prostheses.

23. Place and remove space maintainers.

24. Perform all functions of a dental assistant and expanded function dental assistant.

25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.

26. Provide referrals.

27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.

2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.

2. A health center program that has received a federal look-alike designation.

3. A community health center.

4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.

5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.

2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.

3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.

4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.

5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.

6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.

2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.

2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.

2. Scaling.

3. Closed subgingival curettage.

4. Root planing.

5. Administering local anesthetics and nitrous oxide.

6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.

7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a

nonrefundable Arizona dental jurisprudence examination fee of $100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than $325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of $50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.

2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.

3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.

2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.

3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.

4. Is, to the board's satisfaction, competent to practice dental hygiene.

5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.

2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.

3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.

3. Knowingly made a false statement in the application.

4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.

2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than $300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a $100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a $50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to $100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. 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.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.

2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.

3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.

2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.

3. Fails to obey a summons or other order regularly and properly issued by the board.

4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:

(a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.

3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.

5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.

D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.

E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:

1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.

2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.

3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.

2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.

3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.

2. Services are provided by a federal, state or local government agency.

3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.

4. Services are provided to a patient by an accredited dental or dental hygiene school.

5. The licensee holds a valid permit to provide mobile dental anesthesia services.

6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.

2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.

3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.

4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does

not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.

2. The name of the dentist or dental hygienist, or both, who provided services.

3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.

4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.

2. Suspend or revoke a permit.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA ADMINISTRATIVE CODE (Rules)
Title 4. Professions and Occupations
Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

"Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

"Application" means, for purposes of Article 3 only, forms designated as applications and all documents an additional information the Board requires to be submitted with an application.

"Business Entity" means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

"Calculus" means a hard mineralized deposit attached to the teeth.

"Certificate holder" means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

"Charitable Dental Clinic or Organization" means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

"Clinical evaluation" means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

"Closed subgingival curettage" means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

"Controlled substance" has the meaning prescribed in A.R.S. § 36-2501(A)(3).

"Credit hour" means one clock hour of participation in a recognized continuing dental education program.

"Deep sedation" is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

"Dental laboratory technician" or "dental technician" has the meaning prescribed in A.R.S. § 32-1201(7).

"Dentist of record" means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

"Designee" means a person to whom the Board delegates authority to act on the Board's behalf regarding a particular task specified by this Chapter.

"Direct supervision" means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant's work.

"Disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician's order.

"Dispense for profit" means selling a drug or device for any amount above the administrative overhead costs to inventory.

"Documentation of attendance" means documents that contain the following information:
Name of sponsoring entity;
Course title;
Number of credit hours;
Name of speaker; and

Date, time, and location of the course.

"Drug" means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

"Emerging scientific technology" means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

"Epithelial attachment" means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

"Ex-parte communication" means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

"General anesthesia" is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"General supervision" means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

"Homebound patient" means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

"Irreversible procedure" means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

"Jurisdiction" means the Board's power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

"Licensee" means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

"Local anesthesia" is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

"Minimal sedation" is a minimally depressed level of consciousness that retains a patient's ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

"Moderate sedation" is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

"Nitrous oxide analgesia" means nitrous oxide (N2O/O2) as an inhalation analgesic.

"Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

"Official compendium" means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

"Oral sedation" is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

"Parenteral sedation" is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

"Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

"Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

"Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

"Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

"Polish" means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

"Prescription-only device" means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend "Rx Only."

"Prescription-only drug" does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug required by the federal act to bear on its label the legend "RX Only."

"President's designee" means the Board's executive director, an investigator, or a Board member acting on behalf of the Board president.

"Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

"Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

"Public member" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

"Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval

for Continuing Education (AGDPACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

"Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

"Retired" means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

"Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

"Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

"Section 1301 permit" means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1302 permit" means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1303 permit" means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Section 1304 permit" means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

"Study club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

"Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with R4-11- 201(A)(1).

C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).

E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:1. Commit to a three-year, exclusive service period,

1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year, exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:

1. Have a current dental hygienist license in another state, territory, or district of the United States;
2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).

C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under R4-11-201(A).
E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11- 203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant’s eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant’s documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11- 207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11- 20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
    a. The applicant's dental, dental hygiene, or denturist school, or
    b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
    a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
    b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
    c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30days old;
9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the selfinquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
11. The jurisprudence examination fee.

B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma;
2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
3. Written verification of the applicant's work history, and
4. A copy of a high school diploma or equivalent certificate.

C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 30 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022(Supp. 22-3).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29,1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 30 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
    a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
    b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
    c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
    d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is $15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check::

1. Initial triennial registration, $300 per location;
2. Renewal of triennial registration, $300 per location; and
3. Late triennial registration renewal, $100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: $510;
2. Dentist prorated initial license fee: $110;
3. Dental hygienist triennial renewal fee: $255;
4. Dental hygienist prorated initial license fee: $55;
5. Denturist triennial renewal fee: $233; and
6. Denturist prorated initial license fee: $46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
    a. Dentists: $300;
    b. Dental Hygienists: $100; and
    c. Denturists: $250.
2. Licensure by credential fee:
    a. Dentists: $2,000; and
    b. Dental hygienists: $1,000.
3. Penalty to reinstate an expired license or certificate: $100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
    a. Failure after 10 days: $50; and
    b. Failure after 30 days: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1_. Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided paid by credit card on the Board's website or by money order or cashier's check:

1. Duplicate license: $25;
2. Duplicate certificate: $25;
3. License verification: $25;
4. Copy of audio recording: $10;
5. Photocopies (per page): $.25;
6. Mailing lists of Licensees in digital format: $100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R.

3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: $300 plus $25 for each additional location;
2. Section 1302 permit fee: $300 plus $25 for each additional location;
3. Section 1303 permit fee: $300 plus $25 for each additional location; and
4. Section 1304 permit fee: $300 plus $25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: $300 plus $25 for each additional location;
2. Section 1302 permit renewal fee: $300 plus $25 for each additional location;
3. Section 1303 permit renewal fee: $300 plus $25 for each additional location; and
4. Section 1304 permit renewal fee: $300 plus $25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.
C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.
D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.
E. A dentist of record shall:
1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32- 1289 at one time.
B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.
C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.
D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.
B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.
D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.
E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
    a. A minimum of four hours in medical emergencies; and
    b. A minimum of eight hours in at least two of the following areas:
        i. Pediatric or other special health care needs,
        ii. Preventative dentistry, or
        iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(E) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
    a. The placement of bands, crowns, and restorations;
    b. Dental dam application;
    c. Acid etch procedures; and
    d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;

9. Apply topical fluorides;
10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
11. Observe a patient during nitrous oxide analgesia as instructed by the dentist.

B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:

1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
2. Collect and record information pertaining to extraoral conditions; and
3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS

R4-11-801. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp.17-3).

R4-11-802. Expired

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580,

effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904

renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended

by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,

2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
    a. Has established examination requirements and standards,
    b. Appraised an applicant's qualifications,
    c. Administered comprehensive examinations, and
    d. Upon completion issues a certificate to a dentist who has achieved diplomate status; or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, denturist, or Restricted Permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or denturist shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or denturist shall include an affidavit affirming the Licensee's or denturist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or denturist shall include on the affidavit the Licensee's or denturist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or denturist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or denturist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:

1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or denturist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or denturist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or denturist may not be in compliance with this Article. A Licensee or denturist selected for audit shall provide the Board with Documentation

of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.
H. If a Licensee or denturist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies,

pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
    d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
    e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
    f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
    a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
    b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
    c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
    d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
    e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and

2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
    a. Dentist – 24 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level;
    b. b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
    c. Dental hygienist - 18 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
    d. Denturist – six Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
    a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
    b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;
    c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
    d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
    e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
        i. Only once for materials presented;
        ii. Only if the date of publication or original presentation was during the applicable renewal period; and
        iii. One Credit Hour for each hour of preparation, writing, and presentation; or

f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.

B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):

1. Dentists no more than 21 hours;
2. Dental therapists, no more than 18 horus;
3. Dental hygienists, no more than 15 hours;
4. Denturists, no more than nine hours;
5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
6. Retired denturists, no more than two hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
        vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
    b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
    a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
        i. Emergency Drugs;
        ii. Electrocardiograph monitor;
        iii. Pulse oximeter;
        iv. Cardiac defibrillator or automated external defibrillator;
        v. Positive pressure oxygen and supplemental oxygen;
        vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
        vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
        viii. Endotracheal tubes and appropriate connectors;
        ix. Magill forceps;
        x. Oropharyngeal and nasopharyngeal airways;
        xi. Auxiliary lighting;

xii. Stethoscope; and
xiii. Blood pressure monitoring device; and

b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;

3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
    a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
    b. Pediatric advanced life support in a practice treating pediatric patients; or
    c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:

1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
    a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
    b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
    c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications; or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);

b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.

3. The evaluation team shall recommend one of the following:
   a. Pass. Successful completion of the onsite evaluation;
   b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
   c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
   d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
   e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
   a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
   b. Compliance with subsection (B)(2)(b).

E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:

1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
4. A list of all medications given, with dosage and time intervals, and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and

8. Time of discharge and status, including name of escort.

F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.

G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.

H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:

1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.

J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.

1. A Section 1301 Permit holder may also administer parenteral sedation.
2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.

B. To obtain or renew a Section 1302 Permit, the dentist shall:

1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
    a. General information about the applicant such as:
        i. Name;
        ii. Home and office addresses and telephone numbers;
        iii. Limitations of practice;
        iv. Hospital affiliations;
        v. Denial, curtailment, revocation, or suspension of hospital privileges;
        vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and

b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;

2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
   a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
      i. Emergency Drugs;
      ii. Positive pressure oxygen and supplemental oxygen;
      iii. Stethoscope;
      iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
      v. Oropharyngeal and nasopharyngeal airways;
      vi. Pulse oximeter;
      vii. Auxiliary lighting;
      viii. Blood pressure monitoring device; and
      ix. Cardiac defibrillator or automated external defibrillator; and
   b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
      i. Holds a current course completion confirmation in cardiopulmonary resuscitation health care provider level;
      ii. Is present during the parenteral sedation procedure; and
      iii. After the procedure, monitors the patient until discharge;
3. Hold a valid license to practice dentistry in this state;
4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
   a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
   b. Pediatric advanced life support in a practice treating pediatric patients; or
   c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following conditions:

1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
   a. Sixty didactic hours of basic parenteral sedation to include:
      i. Physical evaluation;
      ii. Management of medical emergencies;
      iii. The importance of and techniques for maintaining proper documentation; and
      iv. Monitoring and the use of monitoring equipment; and
   b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
   a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).

D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.

1. The onsite evaluation team shall consist of:
    a. Two dentists who are Board members, or Board designees for initial applications, or
    b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
    a. The availability of equipment and personnel as specified in subsection (B)(2);
    b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
    c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
    d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
    e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
    f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
    a. Pass. Successful completion of the onsite evaluation;
    b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
    c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
    d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
    e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
b. Compliance with R4-11-1302(B)(2)(b).

E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:

1. Includes the following entries:
   a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
   b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
   c. A list of all medications given, with dosage and time intervals and route and site of administration;
   d. Type of catheter or portal with gauge;
   e. Indicate nothing by mouth or time of last intake of food or water;
   f. Consent form; and
   g. Time of discharge and status, including name of escort; and
2. May include pre-operative and post-operative electrocardiograph report.

F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.

G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.

H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.

I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
   1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
   2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
      a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
         i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
         ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
      b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the

combination does not exceed Minimal Sedation.

B. To obtain or renew a Section 1303 Permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
        a. Contains the following properly operating equipment and supplies during the provision of sedation:
            i. Emergency Drugs;
            ii. Cardiac defibrillator or automated external defibrillator;
            iii. Positive pressure oxygen and supplemental oxygen;
            iv. Stethoscope;
            v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
            vi. Pulse oximeter;
            vii. Blood pressure monitoring device; and
            viii. Auxiliary lighting; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
            i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
            ii. Is present during the Oral Sedation procedure; and
            iii. After the procedure, monitors the patient until discharge;
    3. Hold a valid license to practice dentistry in this state;
    4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
    5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
        a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Pediatric advanced life support in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management.

C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
    1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
    2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
        a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or

3. Provide proof of participation in 30 clock hours of Board- recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
   a. Training in basic Oral Sedation,
   b. Pharmacology,
   c. Physical evaluation,
   d. Management of medical emergencies,
   e. The importance of and techniques for maintaining proper documentation, and
   f. Monitoring and the use of monitoring equipment.

D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
   1. The onsite evaluation team shall consist of:
      a. For initial applications, two dentists who are Board members, or Board designees.
      b. For renewal applications, one dentist who is a Board member, or Board designee.
   2. The onsite team shall evaluate the following:
      a. The availability of equipment and personnel as specified in subsection (B)(2);
      b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
      c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
      d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
      e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
   3. The evaluation team shall recommend one of the following:
      a. Pass. Successful completion of the onsite evaluation;
      b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
      c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
      d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
   4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
   5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:
      a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and

in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
b. Compliance with R4-11-1303(B)(2)(b).

E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
b. Pre-operative and post-operative blood pressure;
c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
d. List of all medications given, including dosage and time intervals;
e. Patient's weight;
f. Consent form;
g. Special notes, such as, nothing by mouth or last intake of food or water; and
h. Time of discharge and status, including name of escort; and
2. May include the following entries:
a. Pre-operative and post-operative electrocardiograph report; and
b. Intra-operative blood pressures.

F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.

G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
2. The Section 1303 Permit holder has completed course- work within the two years prior to submitting the permit application in one or more of the following:
a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support in a practice treating pediatric patients;
c. A recognized continuing education course in advanced airway management;
3. The Section 1303 Permit holder ensures that:
a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guide- lines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
    1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
    2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
    3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1304 permit, a dentist shall:
    1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
        a. General information about the applicant such as:
            i. Name;
            ii. Home and office addresses and telephone numbers;
            iii. Limitations of practice;
            iv. Hospital affiliations;
            v. Denial, curtailment, revocation, or suspension of hospital privileges;
            vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
            vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
        b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
    2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
        a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
            i. Emergency drugs;
            ii. Electrocardiograph monitor;
            iii. Pulse oximeter;
            iv. Cardiac defibrillator or automated external defibrillator (AED);
            v. Positive pressure oxygen and supplemental continuous flow oxygen;
            vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
            vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
            viii. Endotracheal tubes and appropriate connectors;
            ix. Magill forceps;
            x. Oropharyngeal and nasopharyngeal airways;
            xi. Auxiliary lighting;
            xii. Stethoscope; and
            xiii. Blood pressure monitoring device; and
        b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
    3. Hold a valid license to practice dentistry in this state; and
    4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another

agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
c. A recognized continuing education course in advanced airway management.

C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
a. The availability of equipment and personnel as specified in subsection (B)(2);
b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
3. The evaluation team shall recommend one of the following:
a. Pass. Successful completion of the onsite evaluation; or
b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).

D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
4. A list of all medications given, with dosage and time intervals and route and site of administration;
5. Type of catheter or portal with gauge;
6. Indicate nothing by mouth or time of last intake of food or water;
7. Consent form; and
8. Time of discharge and status, including name of escort.

E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.

F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.

G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
    1. The program shall include instruction in the following subject areas:
        a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
        b. Physiological and psychological risks for the use of various modalities of pain control;
        c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
        d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
        e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
    2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
        a. Be the same for all dentists, whether general practitioners or specialists; and
        b. Include each subject area listed in subsection (A)(1).
    3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).

B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. General anesthesia,
        b. Parenteral sedation,
        c. Physical evaluation,
        d. Medical emergencies,
        e. Monitoring and use of monitoring equipment, or
        f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
        c. A recognized continuing education course in advanced airway management;
    3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
    4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
    1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
        a. Oral sedation,
        b. Physical evaluation,
        c. Medical emergencies,
        d. Monitoring and use of monitoring equipment, or
        e. Pharmacology of oral sedation drugs and non-drug substances; and
    2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
        a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
        b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
        c. Pediatric advanced life support (PALS);
        d. A recognized continuing education course in advanced airway management; and
    3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
    1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11- 1306;
    2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
    3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
    4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
B. To renew a Section 1304 permit, the permit holder shall:
    1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
    2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
   1. Date of issuance;
   2. Name and address of the patient to whom the prescription is issued;
   3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
   4. Name and address of the dentist prescribing the drug; and
   5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.

B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp.05-1).

R4-11-1402. Labeling and Dispensing

A. A dentist shall include the following information on the label of all drugs and devices dispensed:
   1. The dentist's name, address, and telephone number;
   2. The serial number;
   3. The date the drug or device is dispensed;
   4. The patient's name;
   5. Name, strength, and quantity of drug or name and quantity of device dispensed;
   6. The name of the drug or device manufacturer or distributor;
   7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
   8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.

C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.

D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
   1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
      a. A patient's allergies,
      b. Incompatibilities with a patient's currently taken medications,
      c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
      d. The frequency of refills;
   2. Verify that the dosage is within proper limits;
   3. Interpret the prescription order;
   4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
   5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
   6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
   7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85º F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
   a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
   b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:
   1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
   2. Sequentially file orders separately from patient records, as follows:
      a. File Schedule II drug orders separately from all other prescription orders;
      b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
      c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
   3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
   4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
   5. Record the date the drug or device is dispensed on each prescription order and label.

B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.

C. A dentist shall maintain:

1. Purchase records of all drugs and devices for three years from the date purchased; and
2. Dispensing records of all drugs and devices for three years from the date dispensed.

D. A dentist who dispenses controlled substances:
   1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
   2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
   3. Shall maintain the inventory for three years from the inventory date;
   4. May use one inventory book for all controlled substances;
   5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
   6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.

E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
   1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
   2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
   3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).

F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
   1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
   2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
   3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.

B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing

the Board the following information:

1. A completed registration form that includes the following information:
   a. The dentist's name and dental license number;
   b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
   c. Locations where the dentist desires to dispense the drugs and devices for profit; and
2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.

B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.

C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:
   1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
      a. A formal interview is scheduled,
      b. The complaint is tabled,
      c. A postponement or continuance is granted, and
      d. A subpoena, notice, or order is issued.
   2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
   3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:
   1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
      a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
      b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
   2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:
   1. Is made in writing,
   2. States the reason for the postponement, and
   3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:
   1. Review and either deny or approve the request for postponement; and
   2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.

B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.

C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
   1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
   2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
   3. Accident or surprise which could not have been prevented by ordinary prudence;
   4. Excessive or insufficient penalties;
   5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
   6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
   7. That the findings of fact of decision is not justified by the evidence or is contrary to law; or
   8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.

D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.

E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.

F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.

G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

A. A business entity shall ensure that the receipt for the current registration period is:
   1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
   2. Exhibited to members of the Board or to duly authorized agents of the Board on request.

B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9

Amend: R18-9-101, R18-9-110, R18-9-A303, R18-9-A309, R18-9-310, R18-9-A311, R18-9-A312, R18-9-A314, R18-9-A315, R18-9-E303, R18-9-E304, R18-9-E314, R18-9-E320, Table 1

Repeal: R18-9-A308

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: March 16, 2023

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 9

Amend: R18-9-101, R18-9-110, R18-9-A303, R18-9-A309, R18-9-A310, R18-9-A311, R18-9-A312, R18-9-A314, R18-9-A315, R18-9-E303, R18-9-E304, R18-9-E314, R18-9-E320, R18-9-E323, Table 1

Repeal: R18-9-A308

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend fifteen (15) rules and repeal one rule in Title 18, Chapter 9, Articles 1 and 3 related to Water Pollution Control. Specifically, the Department states it is amending these rules to provide additional clarity and notice, correct previous errors, collect additional necessary information, and make minimal technical updates to the On-site Wastewater Treatment Facility (OWTF) general permit program or "on-site program." The Department states these changes are expected to increase efficiencies in program implementation for both customers and regulators.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Department cites both general and specific statutory authority for these rules.

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

This rulemaking does not establish a new fee or contain a fee increase.

3. 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 states that it did not rely on any new studies to make these rule changes. However, the Department indicates it did review a study that was previously evaluated in 2005 evidenced by stakeholder references to the study in the 2005 rulemaking. *See* 11 A.A.R. 4544, 4649-50 (Nov. 14, 2005). The study is mentioned in the current rulemaking in "Table 11 of Explanation of Changes" in the preamble and is an Department-commissioned survey from the Yavapai County Office of Environmental Services Division, ADEQ-YCES Aerobic Systems Survey 1996-1997. The Department states that study, done for randomly chosen aerobic systems in Yavapai County over the years 1996-1997, found that most aerobic systems were out of compliance based on sampling, surveys, and inspection. The Department indicates the study is on file with the Department.

The Department also notes another study that was contemplated in previous rulemakings and is also cited here regarding soil absorption rates and hydraulic analyses is Tyler, E.J., H*ydraulic Wastewater Loading Rates to Soil, Abstract for 9th International Symposium on Individual and Small Community Sewage Systems* (2001) available at https://www.soils.wisc.edu/sswmp/SSWMP_4.43.pdf.

4. Summary of the agency's economic impact analysis:

The Department believes the overall impact of the proposed changes to the rules should be minor. The changes are intended to improve clarity, correct errors, and to better align with current industry standards. Stakeholders include the Department, home and other property owners, wastewater system designers and manufacturers, septage pumpers and haulers, sanitarians, local regulatory agencies or health departments (especially in those counties with delegated authority under these rules), wastewater system engineers, contractors and developers (typically in rural or suburban areas), and the general public. Further, the Department believes the stakeholders most likely to be affected by these rule changes are ADEQ's delegated county partners implementing this program on ADEQ's behalf, and designers of on-site wastewater treatment facilities.

5. 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 this rulemaking is the least intrusive and costly means possible to achieve the objectives.

6. What are the economic impacts on stakeholders?

The Department believes that all anticipated costs and benefits should be minimal on all potential stakeholders. The Department states the rulemaking is not intended to be significantly substantive. They indicate that some changes that appear substantive are merely clarifications of existing rules.

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

Between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council, the Department indicates, in rule R18-9-A309(A)(12), there was a typo where the wods "and applicant" was changed to "an applicant." Council staff does not believe this change constitutes a substantially different rule pursuant to A.R.S. § 41-1025.

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

The Department indicates it received eleven (11) comments on the proposed rules which are summarized in Section 11 of the Preamble along with the Department's responses. Copies of the written comments have also been provided with the final materials for the Council's reference. Council staff believes the Department has adequately responded to the comments on these proposed rules.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department indicates that no new permits, licenses, or agency authorizations are being established in this rulemaking. For amendments to the existing rules regarding permits, the Department indicates that they are part of a general permit program and there are no reasons to justify a non-general permit for this rulemaking. As such, the Department is in compliance with A.R.S. § 41-1037.

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

The Commission indicates there are no corresponding federal laws applicable to the subject of this rulemaking.

11. Conclusion

This regular rulemaking from the Department seeks to amend fifteen (15) rules and repeal one rule in Title 18, Chapter 9, Articles 1 and 3 related to Water Pollution Control. Specifically, the Department states it is amending these rules to provide additional clarity and notice, correct previous errors, collect additional necessary information, and make minimal technical updates to the On-site Wastewater Treatment Facility (OWTF) general permit program or "on-site program." The Department states these changes are expected to increase efficiencies in program implementation for both customers and regulators.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Friday, February 10, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Regular Rulemaking: Title 18. Environmental Quality, Chapter 9. Department of Environmental Quality - Water Pollution Control, Articles 1 and 3.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for April 4, 2023. This regular rulemaking updates and modernizes ADEQ's rules regulating onsite wastewater treatment facilities.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)(1)
   a. The public record closed for all rules on October 13, 2022 at 5:00 p.m.
   b. The rulemaking activity relates to a five-year review report, which was approved by GRRC on August 3, 2021.
   c. The rule does not establish a new fee.
   d. The rule does not contain a fee increase.
   e. An immediate effective date is not requested for this rule under A.R.S. § 41-1032.
   f. The Department certifies that the preamble discloses reference to any study relevant to the rule that ADEQ reviewed and either did or did not rely on in its evaluation of or justification for the rule.
   g. No new full-time employee is necessary to implement and enforce the rule.
   h. A list of documents enclosed under A.A.C. R1-6-201(A)(2) through (8), which are enclosed as electronic copies:
      1. This cover letter.
      2. The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of each rule.
      3. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
      4. The written comments received by ADEQ concerning the proposed rule and a written record, transcript, or minutes of any testimony received.

5. ADEQ received no analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states; therefore, no such analysis is included in this submittal.
6. Material incorporated by reference:
   a. "Standard Specification for Precast Concrete Septic Tanks, C1227-03C1227-20," published by the American Society for Testing and Materials.
   b. "Prefabricated Septic Tanks – IAPMO/ANSI Z1000-2019," published by the International Association of Plumbing and Mechanical Officials.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
   a. Authorizing statutes (general): A.R.S. §§ 49-104(A)(10), (B)(10), (B)(13); 49-203(A)(4), (A)(7), (A)(10), (A)(11).
   b. Implementing statutes (specific): A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits program).
8. "Sewage" is defined in R18-9-101(41) by referring to "gray water" as defined in A.R.S. § 49-201(20), which is enclosed.

II. Additional items required by GRRC:
   a. Exemption Memo Request.
   b. Governor's Office initial written approval.
   c. Governor's Office final written approval

Thank you for your timely review and approval. Please contact Trevor Baggiore, Division Director, Water Quality Division, 602-771-2321 or baggiore.trevor@azdeq.gov, if you have any questions.

Sincerely,

DocuSigned by:
Amanda Stone
A11A68124C2C413...

Amanda Stone

Interim Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R18-9-101	Amend
R18-9-110	Amend
R18-9-A303	Amend
R18-9-A308	Repeal
R18-9-A309	Amend
R18-9-A310	Amend
R18-9-A311	Amend
R18-9-A312	Amend
R18-9-A314	Amend
R18-9-A315	Amend
R18-9-E303	Amend
R18-9-E304	Amend
R18-9-E314	Amend
R18-9-E320	Amend
R18-9-E323	Amend
Table 1	Amend

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

Authorizing statutes: A.R.S. §§ 49-104(A)(10), (B)(10), (B)(13); 49-203(A)(4), (A)(7), (A)(10), (A)(11)

Implementing statutes: A.R.S. §§ 49-241 through 49-252 (Aquifer Protection Permits program).

3. The effective date of the rules:

This rule will become effective sixty days after filing the Notice of Final Rulemaking with the Office of the Secretary of State, as provided in A.R.S. § 41-1031.

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 27 A.A.R. 1543 (Sept. 24, 2021)

Notice of Proposed Rulemaking: 28 A.A.R. 2153 (Sept. 2, 2022)

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

Name: Matthew Ivers

Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (480) 612-5686

E-mail: onsitewastewater@azdeq.gov

Website: https://www.azdeq.gov/node/8567

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include as an explanation about the rulemaking:

General Explanation of this Rulemaking:

The Arizona Department of Environmental Quality (ADEQ) is amending Title 18, Chapter 9, Articles 1 and 3 of the Arizona Administrative Code (A.A.C.) to provide additional clarity and notice, correct previous errors, collect additional necessary information, and make minimal technical updates to the On-site Wastewater Treatment Facility (OWTF) general permit program or "on-site program." These changes are expected to increase efficiencies in program implementation for both customers and regulators. The last rulemakings related to OWTFs were in 2001 and 2005. *See generally* 7 A.A.R. 237 (Jan. 12, 2001) and 11 A.A.R. 4544 (Nov. 14, 2005), respectively.

Since the last rulemaking in 2005, stakeholders have grown more vocal in their desires for change in the on-site program. In response to stakeholder feedback, ADEQ is in the process of holistically reviewing its on-site program. As a part of this process, ADEQ established a temporary advisory group, the Wastewater Disposal Advisory Group (WDAG), to help guide ADEQ in determining the path for the next five years, and to help ADEQ determine whether a rulemaking was immediately necessary to ameliorate issues in the on-site program. Based on input from the WDAG, ADEQ published the *On-site Wastewater Treatment Regulatory Program 5-Year Plan: 2021-2025, Version 1: January 2021* (Publication Number: EQR 21-01) (hereafter the "*On-site 5-Year Plan*"), which is available at https://static.azdeq.gov/wqd/rulemaking/onsite/5yr-plan-owwt.pdf. This rulemaking is an action taken to follow the *On-site 5-Year Plan*, a first phase in a series of several anticipated actions outlined in the plan.

As described in the *On-site 5-Year Plan*, ADEQ intends to work with stakeholders and local regulators into the future to improve the on-site program according to several guiding principles, including encouraging the use of recycled water. In moving forward, more research and discussion are needed. For example, rules that govern the relationship between larger centralized wastewater collection and treatment systems and smaller on-site systems may warrant further evaluation with a broader set of stakeholders.

This rulemaking preamble describes the on-site program as it currently operates under the law, and explains the changes reflected in this rulemaking. This rulemaking and preamble do not reflect decisions about future changes or future direction.

What are On-site Wastewater Treatment Facilities?

An OWTF is defined in the Arizona Revised Statutes as "a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site." A.R.S. § 49-201(29). The on-site general permit program allows homes and businesses that are not connected to a centralized sewage collection system to dispose of their treated wastewater through a conventional or alternative OWTF facility consisting of both:

(i) A treatment technology (or combination of technologies), such as a septic tank and/or an aerobic treatment unit, and

(ii) Disposal technology, such as a trench or seepage pit.

The most common example of a OWTF is a septic tank with a drainfield. Some examples of businesses or commercial properties that may have an OWTF include apartment complexes, R.V. parks, gas stations, hotels, and office buildings.

The rules pertaining to regulation of OWTFs serve two overarching purposes:

(1) To prevent "environmental nuisances," such as unsanitary conditions caused by surfacing sewage, and the "transmission of sewage or insect borne diseases," pursuant to A.R.S. § 49-141 *et seq*. and A.R.S. § 49-104(B)(13), respectively; and

(2) To control discharges of pollutants that may reasonably reach an aquifer, pursuant to A.R.S. §§ 49-241 through 49-252 and A.R.S. § 49-201(12).

Typical pollutants of concern discharged from improperly installed or maintained on-site systems include (1) nutrients (nitrogen and phosphorus) and (2) pathogens. Excessive nitrate-nitrogen, in drinking water can deprive blood cells of oxygen if ingested (i.e., methemoglobinemia), and primarily affects infants. In Arizona all groundwater is considered to be drinking water. Pathogens include parasites, viruses and bacterium, such as E. coli. *See generally* U.S. Department of Human Health Services*, Toxicological Profile for Nitrate and Nitrite* (2017) (for nitrates); and *see* EPA Office of Water, *Onsite Wastewater Treatment Systems Manual* 1-2, Table 1-1 (2002) (for pathogens). If installed and maintained properly, however, OWTFs adequately protect groundwater and prevent nuisances caused by disposal of sewage. Adequately treated discharge provides the environmental benefit of aquifer recharge. In this way, OWTF may provide unique long-term solutions to water scarcity throughout Arizona.

How Many On-site Systems Are Estimated to Exist in Arizona?

ADEQ estimates there were more than 640,000 properties with on-site systems throughout the state at the end of 2022. As of 2001, the Department estimated 400,000 properties in Arizona had an on-site system. *See* 7 A.A.R. 237, 248 (Jan. 12, 2001). Based on information presented in the 2005 rulemaking and information

gathered from informal county surveys, it is currently still estimated that on average of just over 11,000 new systems are permitted statewide each year, after accounting for economic fluctuations between 2001 and 2022. *E.g.*, 11 A.A.R. 4544, 4547, 4589 (Nov. 14, 2005). Therefore, it is estimated that at the end of 2022, over 240,000 new systems have been permitted and installed since the 2001 rulemaking.

Regulatory Structure of the OWTF General Permit Program

OWTFs are generally regulated under broader Aquifer Protection Permit (APP) program statutes in A.R.S. Title 49, Chapter 2, Article 3, sewage treatment collection, treatment, and disposal authorities in A.R.S. § 49-104(B), and the Environmental Nuisance statutes in A.R.S. Title 49, Chapter 1, Article 3. ADEQ's general authorizing statutes in A.R.S. Title 49, the Arizona Administrative Procedures Act in Title 41, Chapter 6, and enforcement statutes in A.R.S. Title 49, Chapter 2, Article 4 also apply to this program.

This program consists of general permits. A general permit is a "regulatory permit, license or authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted….if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization…." A.R.S. § 41-1001. For a general program to operate as intended, then, each general permit should be for facilities that are similar in nature, require less information than an individual permit, and be relatively simple to process. Hence, discharge applications that require excessive review times and specialized expertise may be more appropriately processed as individual permits. Those facilities that fall outside the scope of the general permit rules may be able to apply for and obtain an individual Aquifer Protection Permit under Chapter 9, Article 2.

An OWTF will either be authorized to discharge under a Type 1 or Type 4 general permit. *See generally* A.A.C. R18-9-A301, -A301(A)(1) & (A)(4), -B301(I), and Part E. Type 1 and 4 authorizations are issued under the general permits to facilities for their operational life. *See* A.A.C. R18-9-A303(B). Operational life is "the designed or planned period during which a facility remains operational while being subject to permit conditions…." A.A.C. R18-9-A101(32). Under current rules, a facility must be designed to have an operational life of at least 20 years. *See* A.A.C. R18-A312(B)(1). Only the 1.09 general permit authorizes the continued discharge by grandfathered on-site wastewater treatment facilities. *See* A.A.C. R18-9-B301(I).

In terms of rules regulating general permits for OWTFs, which are the focus of this rulemaking, Arizona Administrative Code, Title 18, Chapter 9, Article 1 and Article 3 apply.

In Article 1, the most currently relevant provisions for purposes of regulation of OWTFs under general permits are the following:

- A.A.C. R18-9-101 (Definitions), which contains the definitions applicable to the APP program as a whole, a subset of which are those definitions applicable to only OWTFs;
- A.A.C. R18-9-106 (Determination of Applicability), prescribing a process by which a person may request a formal determination of whether the Aquifer Protection Permit program applies to the person and their activity,

- A.A.C. R18-9-107 (Consolidation of Aquifer Protection Permits), which essentially allows the Director to consolidate regulation of any number of facilities permitted under individual or general permits into a single individual permit if part of the same project if certain prerequisites are met; and
- A.A.C. R18-9-110 (Inspections, Violations, and Enforcement), a rule providing additional notice of inspection and enforcement statutes, which ADEQ's and the Attorney General's respective statutory authorities and duties would supersede if the rule's language is legally too limited in scope for necessary and appropriate legal enforcement of the program. (*Note: A.A.C. R18-9-A308 is also rule prescribing the scope of enforcement for OWTFs, but ADEQ is repealing it in this rulemaking because the enforcement statutes supersede it.*)

In Article 3, the relevant provisions for purposes of regulation of OWTFs under general permits are the following:

- All of Part A – General provisions for all general permits generally *(A.A.C. R18-9-A301 through -A308, and R18-9-A317)*, and OWTF-specific rules *(A.A.C. R18-9-A309 through -A316)*. At a high level as applicable to OWTFs, these provisions prescribe:
  - Application process requirements, including that new Type 4 or sufficiently modified Type 1 or Type 4 facilities (*see A.A.C. R18-9-A301(A)(4), R18-9-A309(A)(9), and R18-9-B301(I)(2))* must:
    - Submit a Notice of Intent (NOI) to Discharge according to requirements *(A.A.C. R18-9-A301(B), R18-9-A309(B), and Part E permit-specific requirements, such as the additional requirements for a 4.08 Wisconsin Mound general permit in R18-9-E308(C))*,
    - Receive a Construction Authorization (CA) from the Department or delegated agency *(A.A.C. R18-9-A301(D)(1))*, then
    - Submit a Request for Discharge Authorization (RFDA) according to requirements *(A.A.C. R18-9-A301(D)(1)(f), R18-9-A309(C), and specific Part E permit requirements)*, and
    - Receive a Discharge Authorization (DA) from the Department or delegated agency in order to operate the facility *(A.A.C. R18-9-A301(D)(2) and R18-9-A309(C))*;
  - Site investigation requirements to be completed by an applicant to characterize the type and quality of the soil at the site, and identification of site limiting conditions that would impact the efficacy of facility treatment *(A.A.C. R18-9-A310 and R18-9-A312(D) & (E))*;
  - Design and operation requirements, including:
    - Design flow determination criteria *(A.A.C. R18-9-A309(B)(3); R18-9-A314(4), and Table 1 of the rule)*,
    - What permit(s) would apply to the new facility or new multiple facilities at the site based on the cumulative design flows at the site *(A.A.C. R18-A309(A)(10))*,
    - General provisions and generally applicable facility design requirements, including setback requirements, appropriate materials and manufactured components, and septic

tank manufacturing requirements *(A.A.C. R18-9-A309, R18-9-A312(C), R18-9-A312(F), and R18-9-A314)*,

- Generally applicable facility type selection requirements based on site conditions, technological limitations, and other requirements and appropriate system components *(A.A.C. R18-9-A311)*;
- Required vertical separation distances depending on the type of facility and site investigation results *(A.A.C. R18-9-A312(E))*,
- Operational limitations that a design must account for *(A.A.C. R18-9-A309(A)(7))*,
- Process for requesting approval for alternative design, setback, installation, or operational features *(A.A.C. R18-9-A312(G))*, and
- Installation requirements *(A.A.C. R18-9-A313(A))*; and

o Maintenance requirements *(A.A.C. R18-9-A313(B))*;
o Recordkeeping requirements *(A.A.C. R18-9-A309(F))*;
o Changes at the facility that require a new Notice of Intent to Discharge, including expansions *(A.A.C. R18-9-A309(A)(9) and R18-9-A305(B))*;
o Transfer of facility ownership requirements *(A.A.C. R18-9-A316)*;
o Proprietary products listing for those products that may be more conveniently used in appropriate OWTF designs *(A.A.C. R18-9-A309(E))*;
o Revocation of coverage provisions *(A.A.C. R18-9-A307)*; and
o Closure requirements *(A.A.C. R18-9-A306 and R18-9-A309(D))*;

- A.A.C. R18-9-B301(I) in Part B, which is the 1.09 general permit and the only Type 1 OWTF permit, and allows existing facilities installed before 2001 with 20,000 gal/day or less design flows to continue to discharge as long as the conditions in the rule are met (Note: This permit also covers similarly grandfathered "sewage treatment facilities" as defined in A.A.C. R19-9-101.);
- A.A.C. R18-9-E302 in Part E, which, in tandem with provisions in Part A, is the 4.02 general permit consisting of design requirements for conventional septic tank wastewater treatment and gravity disposal system technologies for design flows less than 3000 gal/day;
- A.A.C. R18-9-E303 through -E322 in Part E, which, in tandem with provisions in Part A, are the 4.03 through 4.22 general permits consisting of design requirements for alternative system technologies for design flows of less than 3000 gal/day;
- A.A.C. R18-9-E323 in Part E, which is a consolidating permit for new facilities at a site that has the design flow of 3000 to less than 24,000 gal/day; and
- A.A.C. Title 18, Chapter 9, Article 3, Table 1 of the rule, which is the main table for determining design flow for flows other than single family dwellings, whereas a designer of a single-family dwelling would refer to R18-9-A314(4), regardless of the type of system. Note that Table 1 currently

applies to OWTF general permits, OWTF individual permits, and sewage collection and conveyance systems.

What Is Not Currently Regulated under, But Impacts the APP On-site Program?

Sewage Collection or Wastewater Conveyance Systems

OWTFs do not include sewage collection or conveyance systems. Although they are somewhat related to each other, the first is treatment, and the latter two are transport. Sewage collection or conveyance systems are regulated under rules specific to them. A.A.C. R18-9-B301(J), (K), and R18-9-E301 regulate the 1.10, 1.11, and 4.01 general permits, respectively, according to the following paraphrased applicability constraints, but see the actual language for other coverage qualifications:

- A.A.C. R18-9-B301(J) (1.10 General Permit) governs a sewage collection system installed *before January 1, 2001* that either:

  (1) serves flows greater than 3000 gallons per day or,

  (2) regardless of flow, serves multiple dwellings in a system that includes as manhole, force main, or lift station.

- A.A.C. R18-9-B301(K) (1.11 General Permit) governs, *regardless of the installation date*, either:

  (1) a sewage collection system that serves flows of 3000 gallons per day or less, regardless of the number of service connections, and as long as the system does not include a manhole, force main, or lift station serving more than one dwelling. This means that the system could use clean outs or gravity lines, if allowed by applicable local building and construction codes, and still serve multiple buildings, or it governs,

  (2) regardless of daily design flow or building type, an individual gravity sewer line from a single building, including from a single-family dwelling, directly to an interceptor, lateral, or manhole. *See* 11 A.A.R. 4544, 4576-4578, 4646-4647 (Nov. 14, 2005).

- A.A.C. R18-9-E301 (4.01 General Permits) governs a sewage collection system installed after 2001 that serves flows greater than 3000 gallons per day, and does not govern a gravity sewer line conveying sewage from a single building drain, which is governed under a 1.11 general permit.

"Sewage collection system" is a defined term under the rules and means, "a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage *from its sources to the entry of a* sewage treatment facility or *on-site wastewater treatment facility* serving sources other than a single-family dwelling." A.A.C. R18-9-101(41) (emphasis added). The definition itself indicates that a sewage collection system impacts an OWTF, but definitionally sets the OWTF apart from being part of the definition of sewage collection system itself. According to the definition, the limit of the extent of sewage collection system is the entry of either a sewage treatment facility or

an OWTF. Sewage conveyances, were they defined, would be defined similarly as they serve the same purpose as a sewage collection system, just for different flows and system sizes. Likewise, the definition of OWTF does not include a sewage collection system as a part of its definition. Therefore, while sewage collection systems impact OWTF, they are not in the same definitional category of regulation.

Direct Reuse of Recycled Water

Also, except for allowing beneficial reuse of gray water, the Recycled Water program, which consists of A.A.C. Title 18, Chapter 9, Article 7, and under A.A.C. Title 18, Chapter 11, Article 3, does not currently allow OWTFs to reuse wastewater for beneficial use. Currently, the only a regulatory structure for OWTFs is for the disposal of wastewater. The regulation of gray water use is referenced in the OWTF rules, but is generally regulated under Article 7 of this Chapter. This has contributed to confusion in interpreting how to account for gray water when designing an on-site system. *See* "Table 7 of Explanation of Changes: General Design Requirements" later in this preamble for more information on this specific topic.

Under APP program statutory law, OWTFs are categorically assumed to be discharging facilities, and therefore must be operated under an individual or general permit, unless exempted from APP by rule in accordance with A.R.S. § 49-250(A). *See* A.R.S. §§ 49-241(B) and 49-250(A). Categorically discharging facilities are assumed to add a pollutant(s) "either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollution will reach an aquifer." Indeed, the statutory definition OWTF states that it is a system installed to "treat and dispose of wastewater" and in 2005, ADEQ specifically modified "the definition of "disposal works" to clarify that the term does not include activities relating to the reuse of reclaimed water covered under 18 A.A.C. 9, Article 7." 11 A.A.R. 4544, 4550 (Nov. 14, 2005). Therefore, the current legal framework does not support OWTFs for beneficial reuse, except potentially by individual recycled water permit as determined appropriate on a case-by-case basis.

However, the statutory definition of "reclaimed water" is "water that has been treated or processed by a wastewater treatment plant *or an on-site wastewater treatment facility*" (emphasis added). Therefore, OWTFs may in the future be regulated for beneficial reuse under the Recycled Water program as well as for discharge under the Aquifer Protection Permit program (APP) (similar to regulation of larger wastewater treatment plants that also produce reclaimed water for beneficial reuse). Many facets need to be explored before this occurs, including appropriate beneficial uses for recycled water from OWTFs, as well as the type of oversight needed to manage such a program and ensure protection of human health and the environment. Some studies indicate there may be a net environmental benefit to reusing treated water from OWTF, as long as the regulatory program is appropriate and managed correctly. *See generally, e.g.,* Massoud, May A., et al., "Decentralized Approaches to Wastewater Treatment and Management: Applicability in Developing Countries," 90 J. OF ENVTL. MNGMT. 652-659 (2009). For this reason, ADEQ is working with workgroups to explore the potential of regulating OWTFs to allow reuse of recycled water for appropriate beneficial uses.

Section by Section Explanation of Changes in this Rulemaking

Rule modifications are organized into several tables in terms of the following topics rather than by section number:

- Table 1 of Explanation of Changes: Definitions
- Table 2 of Explanation of Changes: Programmatic Implementation
- Table 3 of Explanation of Changes: Notice of Intent to Discharge
- Table 4 of Explanation of Changes: Request for Discharge Authorization
- Table 5 of Explanation of Changes: Site Investigation for Design Preparation
- Table 6 of Explanation of Changes: Design Flow – Table 1
- Table 7 of Explanation of Changes: General Design Requirements
- Table 8 of Explanation of Changes: Conventional System Designs
- Table 9 of Explanation of Changes: Alternative System Designs
- Table 10 of Explanation of Changes: Alternative Design Features Process per A312(G)
- Table 11 of Explanation of Changes: 4.23 Larger Flow Permits

Table 1 of Explanation of Changes: Definitions

Rule Content Summary	Rule(s) affected (R18-9-xxx)	Type of Change	Explanation of Changes to: **Definitions**
Cesspool definition – add	101	Clarification	For clarity, this rulemaking change adds a definition for "cesspool." Cesspools are prohibited under A.A.C. R18-9-A309(A)(4), but there is currently no definition of "cesspool." This change clarifies the definition and provides the public with additional notice.
Gray water definition – add	101	Clarification	Stakeholders have conveyed that there is confusion among the public regarding the definition of "gray water." Therefore, ADEQ is adding the governing statutory definition in A.R.S. § 49-201 into these rules to provide additional notice to the public. *See* "Table 7 of Explanation of Changes: General Design Requirements" for more information on this specific topic.
OWTF definition correction	101	Correction	ADEQ is correcting the definition of "on-site wastewater treatment facility" with minimal changes, to conform to the statutory definition in A.R.S. § 49-201.

Table 2 of Explanation of Changes: Programmatic Implementation

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: **Programmatic Implementation**
Renewal – Typo	A303(D)	Correction	A.A.C. R18-9-A303(D) contains an incorrect reference and is therefore confusing. Type 1 and Type 4 facilities are authorized for the operational life of the facility pursuant to A303(D). Therefore, the reference in A303(D) should be to A303(C) instead of (B).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Programmatic Implementation
Enforcement	110; A308	Correction (in the form of Repealing A308 and modifying 110)	A.A.C. R18-9-110 and R18-9-A308 invalidly limit statutory enforcement discretion for an entire class of facilities, namely OWTFs. Rather, OWTFs are subject to enforcement under all applicable provisions of A.R.S. Title 49, Chapter 2, Article 4. Therefore, ADEQ is repealing A.A.C. R18-9-A308 and modifying A.A.C. R18-9-110 to reflect proper application of environmental enforcement statutes. Note that other statutory provisions are also applicable to facilities, including those for environmental nuisances under A.R.S. Title 49, Chapter 1, Article 3.
Application process clarification	A309(A)("12") & A309(C)	Clarification	To clarify and summarize, in rule, the overall required application process to obtain coverage under a Type 4 general permit, ADEQ intends to add the following language in the General Provisions section in A.A.C. R18-9-A312(A)(12) (a new subsection): "To obtain coverage under a Type 4 General Permit, an applicant must, in the following order: a. Submit a Notice of Intent to Discharge according to requirements in R18-9-A301(B), R18-9-A309(B), and according to permit-specific requirements in Part E of Article 3, b. Receive a Construction Authorization from the Director pursuant to R18-9-A301(D)(1)), c. Submit a Request for Discharge Authorization according to requirements in R18-9-A301(D)(1)(f), R18-9-A309(C), and according to permit-specific requirements in Part E of Article 3, and d. Receive a Discharge Authorization from the Director pursuant to R18-9-A301(D)(2) and R18-9-A309(C)." Also, language is slightly modified in R18-9-A309(C) to clarify that the scope of the additional requirements in that subsection is for both the Request for Discharge Authorization and the Discharge Authorization issuance.

Table 3 of Explanation of Changes: Notice of Intent to Discharge

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Notice of Intent to Discharge
Addition of editorial introductory language	A309(A)(5)	Clarification	Stakeholders have expressed confusion when interpreting the list in A.A.C. R18-9-A309(A)(5) because the introductory language precedes two subsequent lists. ADEQ agrees that while the language as it exists is technically accurate, adding limited introductory

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Notice of Intent to Discharge
before lists			language would provide a clearer signal of the subsequent lists. This change is simply editorial in nature.
Repairs (and Routine Work) (both)	A309(A)(9)	Clarification	The actions described in A309(A)(9)(b) are those actions that ***do*** require a new Notice of Intent to Discharge (NOI) for the facility because the actions ***do not*** qualify as repairs or routine work to a facility. Modifications here add "routine work" along with "repairs" throughout this section as actions that ***do not*** **require a new NOI**. These rule changes remove any appearance of substantive difference between "repair" or "routine work" for purposes of determining whether a permit is required. Rather, it is assumed that both repairs and routine work or maintenance are expected as a part of a facility's operation of a facility.
Simplification and Correction of Repairs and Routine Work Rule	A309(A)(9)	Clarification /Correction	Under A.A.C. R18-9-A310(A)(9), a new NOI is not required for routine work. This rule also lists several actions that ***do*** require an NOI because those actions ***are not*** routine work under the rule. This rule has been extremely difficult to understand and follow over the years for both regulators and permittees. ADEQ's rule changes here are influenced by stakeholder recommendations and are attempts to simplify the rule. ADEQ is therefore simplifying the rule so that an NOI is required if a facility owner intends to: • Convert a facility under operation of gravity at some point in the system to operation of a pump or some other mechanical device that is not necessarily electrically powered (e.g., a siphon); • Modify or replace the treatment or disposal works of the facility, which does not necessarily encompass minor replacement of functionally equivalent components as a matter of routine maintenance or repair; or • Modify the facility in any way that is inconsistent from the originally approved design and installation of the facility (e.g., increasing the design flow above the originally approved level). This also means that as-built changes approved during the installation and discharge authorization phase are considered consistent with the originally approved design and installation of the facility. It appears the original intent of this rule was to attempt to capture several specific actions that do not qualify as routine work. However,

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Notice of Intent to Discharge
			ADEQ has realized that the attempted specificity has overcomplicated the rule and made it difficult to comprehend. In fact, the rule appears to contradict other rules and repeats some, but not all, actions already prohibited or required by rule in the permitting process. For a detailed example, consider the following: Under R18-9-A305(B), a permittee may expand a facility covered under a Type 4 ***if*** the permittee submits a new NOI and the Department issues a new DA. OWTFs are either Type 1 or Type 4 generally permitted facilities, and all newly permitted facilities will be Type 4. Subsection A.A.C. R18-9-A309(A)(9)(b)(vi) requires a new NOI if a facility's disposal works are extended "more than 10 feet beyond the footprint of the original disposal works." This subsection implies that a certain level of expansion of a facility's original footprint, up to 10 feet, is allowed without an NOI. (The Department interprets "original" in the sense of the word "origin," meaning when the OWTF very first came into being and was first installed.) This subsection's apparent allowance for expansion of the facility's original footprint up to 10 feet without an NOI directly conflicts with the clear requirement in A.A.C. R18-9-A305(B) to submit a new NOI if a Type 4 facility is expanded at all. Further, the Department cannot offer a valid technical reason to allow expansion of the disposal works beyond its original footprint without a new NOI. Several of the other subsections are simply restatements of permitting requirements or prohibitions to ensure that the facility or its treatment works and disposal works are not modified in conflict with the original facility's approval so as to negatively impact human health or the environment. However, it is unclear why some requirements were specified, and others were not. These rule changes clarify what is already required in rule, remove confusing contradictions, and do not increase burdens on the regulated community.
NOI requirements – pretreatment report	A309(B)(6)	Information collection addition	ADEQ is adding language in A.A.C. R18-9-A309(B) (proposed as (B)(6)) requiring submittal of a design report for pretreatment equipment for a request for authorization to be administratively complete. ADEQ believes this additional information is minimally

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Notice of Intent to Discharge
			burdensome and necessary to verify that the proposed pretreatment will produce typical sewage, is appropriate for use with the chosen OWTF technology, and that the ultimate treated water will meet applicable performance standards.
NOI requirements – drainage and erosion information	A309(B)(2)(b)(iv) & A309(B)(6)(a)(v)	Information collection addition	ADEQ is adding language in A.A.C. R18-9-A309(B)(2)(b)(iv) requiring submittal of drainage patterns, and as applicable, drainage controls and erosion protection for the proposed OWTF. Similar information is already required for alternative systems in A309(B)(6), so this addition makes the requirement applicable to all OWTFs, including conventional OWTFs, too. ADEQ anticipates that most designers are already reviewing this information and that a designer should be able to comply with this requirement easily. It is an important provision, however, because erosion or saturated soil can adversely affect OWTF treatment effectiveness. This is an aspect of the system that permit reviewers consider to evaluate the appropriateness of the system at the site, so providing this information at the start of the process will help to save the permittee time in receiving a Construction Authorization. ADEQ also removed the language in A309(B)(6)(a)(v) since drainage information will be a generally applicable requirement rather than an alternative-specific requirement.

Table 4 of Explanation of Changes: Request for Discharge Authorization

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Request for Discharge Authorization
RFDA/COC clarifications	A309(C)(1) & A309(C)(2)	Clarification	ADEQ is making editorial changes to the current rules in A.A.C. R18-9-A309(C)(1) & (C)(2) to clarify that components of the Request for Discharge Authorization (RFDA) for either a conventional or alternative system must be completed and submitted by the applicant or the agent of the applicant, or by the engineer or designer of record, as appropriate. An agent is the person legally authorized by the owner-applicant to act on their behalf under agency and contract law. A representative from an entity regulating the applicant, such as a delegated county's inspector, may not act as an agent on behalf of the applicant as this would disrupt the regulatory thread back to the applicant. Further, a regulatory representative may not authorize backfill of an alternative

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Request for Discharge Authorization
			system until the designer or engineer of record has had an opportunity to verify that the system was properly installed according to the approved design. The Certificate of Completion (COC), which is a component of the RFDA for alternative systems, is submitted so that the applicant may make use of their OWTF and obtain a discharge authorization from the regulatory entity. Therefore, the COC must be signed by the designer or engineer of record, as appropriate. This ensures that the person who signs the COC has the requisite knowledge to be able to verify that a facility is installed according to the approved design. However, the engineer or designer signing the COC does not have to be the original designer or engineer of record. Rather the person signing the COC should be the current implicit or express authorized agent of the applicant as a separate matter of contract and agency law. ADEQ would assume that the current engineer or designer of record is the applicant's agent. In some cases, however, the designer or engineer may be the applicant themselves (i.e, an owner of the facility that has the requisite knowledge and expertise to design a system). "Applicant" typically refers to either the applicant or the applicant's agent. The qualification of "applicant" in A.A.C. R18-9-A309(C)(1) here is not intended to change the meaning of the word "applicant" elsewhere in the rules. There has simply been confusion about this topic in this particular area of the rules, which has led to these clarifying changes.

Table 5 of Explanation of Changes: Site Investigation for Design Preparation

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Site Investigation for Design
Surface limiting condition – 100-Year zone qualification	A310(C)(2)(d)	Technical Update	Right now, if any portion of a 100-year flood hazard zone is located on the property on which an OWTF is placed then a surface limiting condition exists. A property could be quite large. Therefore, a site investigator should further be able to inspect whether the flood zone is near the OWTF and may adversely affect the ability of the facility to function properly before it's designated a surface limiting condition. ADEQ is making changes to reflect this.
Remove ASTM auger boring standard	A310(D)(1)(a) & (D)(3)(b)	Technical Update	ADEQ is removing the ASTM auger boring standard, "Standard Practice for Soil Investigation and Sampling by Auger Borings, D1452-80" (2000), because it is rarely, if ever, used and is overall an un-useful

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Site Investigation for Design
			tool when conducting site investigations.
Typo – seepage pit percolation rate test methodology reference	A310(G)(3)(d)(iii)	Correction	The formula description for the seepage pit percolation test in subsection A312(G)(3)(d)(iii) inappropriately cites the general percolation test in subsection (F) to determining the stabilized infiltration rate, but (G) is the correct reference. This rulemaking corrects this typographical error.
Typo – "consistency" to "consistence" per ASTM & USDA	A312(D)(2)(b) – soil characterization table, line item "D."	Correction	The term "consistency" in the soil characterization table in A.A.C. R18-9-A312(D)(2)(b) should be changed to "consistence," because "consistence" is the correct technical soil classification term in the context of the soil characterization table. The rule's subsurface characterization method for classifying soil by field observable characteristics is the American Society for Testing and Materials (ASTM) D5921-96 *Standard Practice of Subsurface Site Characterization of Test Pits for On-Site Septic Systems* (1996, Reapproved 2003). This ASTM method is based upon the U.S. Department of Agriculture's (USDA) Soil Conservation Service classification system as of 1996, as stated in the ASTM method itself in the introduction and in section 1.2 of the standard. Several documents cited in ASTM 5921-96 also reflect this fact, including the citation underlying "Table 7 Rupture Resistance Classes," namely Reference 4, Soil Survey Staff, "Soil Survey Manual," *USDA Agricultural Handbook No. 18* (1993). The 1993 Soil Survey Manual states, "Soil consistence in the general sense refers to 'attributes of soil material as expressed in degree of cohesion and adhesion or in resistance to deformation on rupture.'" USDA Soil Survey Staff, *Soil Survey Manual* at 91 (1993) (obsolete), *available at* https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/ref/?cid=nrcs142p2_054261 (last visited Sept. 14, 2021). The 1993 Soil Survey Manual also explains there is a difference between "consistence" and "consistency" and explains the difference. *Id*. at 92. A later version of the Soil Survey Manual explicitly states, "Consistence is *not* synonymous with consistency." USDA Soil Science Division Staff, *Soil Survey Manual* at 180 (2017), *available at* https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/ref/?cid=nrcs142p2_054261 (last visited Sept. 14, 2021). Therefore, under the ASTM D5921-96 standard, the USDA soil survey manual, and related documentation and literature, "consistency" is the

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Site Investigation for Design
			incorrect term to use in the soil characterization table in A.A.C. R18-9-A312(D)(2)(b). This was apparently a typo in a previous rulemaking. Hence, ADEQ is exchanging the term "consistency" for "consistence." ADEQ notes that although this method, ASTM 5921-96 (2003) has been withdrawn by ASTM, it is still a valid soil characterization method for ADEQ's purposes at this time. Technical workgroups are currently evaluating whether another soil characterization method would be more appropriate into the future.
Typo – "silty" loam to "silt" loam per ASTM 5921	A312(D)(2)(b) – soil characterization table, line item "K."	Correction	Tables 3 and 12 of ASTM D5921-96 indicate that the correct technical term is "silt" loam as opposed to "silty loam." "Silt" loam is used elsewhere in this table, as well. ADEQ is simply correcting this typographical error. Note that the term "silty" is still used in ASTM 5921 as an adjective in the phrase "silty clay loam." See the phrase as used in ASTM 5921 (2003), specifically in "Table 3 Abbreviations and Designations for USDA Soil Texture Classes (1), (3), and (7)".

Table 6 of Explanation of Changes: "Design Flow – Table 1 of the Rule"

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Design Flow – Table 1 of the Rule
Table 1- General minor editorial clarifications	Table 1	Clarification	The section for "Restaurant/Cafeteria" is confusing in that it is one of only two sections that has a line item directly across the title of the section ("Restaurant/Cafeteria --- Employee --- 20"). For this reason, ADEQ is simply moving the Employee line item to below the title of the section. ADEQ is making this change for other Wastewater Sources that have multiple Applicable Units in the table, including "Airport" and "Store." Also, Table 1 of the rule is generally confusing in that there are no introductory instructions. ADEQ is adding minimal instructions to add each line item applicable to a facility. For example, for a restaurant that normally has 10 employees on the floor and in the kitchen, has a toilet and 100 customers a day, is full service and serves 110 meals in a day, and has a garbage disposal, then the design flow would be 1,660 gal/day ((20×10) + (7×100) + (6×110) + (1×100) = 1,660). A similar approach would apply for calculating the design flow of an apartment building, as it is likely that apartment buildings have various floor plans, some with 1 bedroom, and some with 2 bedrooms, for example.
Table 1 - Dwelling	Table 1	Correction	Currently, A.A.C. R18-9-A309(B)(3) refers applicant to Table 1 to

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Design Flow – Table 1 of the Rule
design flow reference			calculate design flow. For single family dwellings, Table 1 refers an applicant to A.A.C. R18-9-A314(D)(1). This reference does not exist. The correct reference is A.A.C. R18-9-A314(4)(a). Also, this reference is slightly confusing because A.A.C. R18-9-A314 applies to septic tank design and size, but the method for calculating design flow for all single-family dwellings, whether alternative or conventional systems are used, is in A.A.C. R18-9-A314. Therefore, ADEQ is adding language to clarify that this method of calculation would apply for both conventional and alternative systems if used at a single-family dwelling.
Table 1 – Hotel/motel linens	Table 1	Clarification	When calculating the flow for a hotel, the figure currently in Table 1 of the rule does not account for a hotel laundering its own linens. If a hotel is washing linens, this is a major impact and would need to be accounted for in the flow. The flow for "commercial laundry" would likely be an appropriate substitute if a hotel is doing their own linens. Therefore, ADEQ is clarifying that the flow figure for hotels in Table 1 does not account for linen laundry.
Table 1 – Restaurant/cafeteria disposable service v. full service	Table 1	Clarification	The section for restaurants is confusing as to which flow would apply for different types of restaurants. A restaurant with disposable service where food items are served in disposable dinnerware such as Chipotle, would have a lower sewage flow than a restaurant that has full plated table service and dishes to wash, such as Olive Garden. In this rulemaking, ADEQ is slightly modifying the language in Table 1 of the rule to clarify the difference between these two types of restaurant flows to ensure that a system is adequately sized for the volume of flow.

Table 7 of Explanation of Changes: General Design Requirements

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
"Design and" Operational Requirements	A309(A)(7)	Clarification	ADEQ is adding clarification to the operational requirements in R18-9-A309(A)(7). In order to satisfy the operational requirements, a designer must have taken this section into account to ensure that a system would comply with these rules during its operational life. Therefore, to provide additional notice, ADEQ is adding the word "design."
Gray Water Accounting in Design Flow	A309(A)("11") & A309(B)(3) &	Clarification	Over the years, there has been confusion as to (1) what qualifies as gray water, and (2) whether an on-site facility must be sized to process both black and gray water flows.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
	A312(B)(3) (citing to A309(B)(3) and other provisions) & E303(F)(2)(b)		First, the definition of gray water is a statutory definition, and is being added into Article 1 of Chapter 9. "Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet. A.R.S. § 49-201(20). Gray water that is not separated from black water is black water, i.e., wastewater, and must be disposed of in the sewer or pursuant to the on-site rules. Gray water that is not used in accordance with gray water rules must be disposed of in the sewer or pursuant to the on-site rules. Second, as noted in the statutory definition, gray water does not include wastewater flows from the kitchen sink, even if using an interceptor. Flows including kitchen sink wastewater are considered black water. Some recreational vehicle wastewater holding tanks are labeled as holding gray water, but their definition of gray water is not the same as Arizona's if it includes kitchen sink or other black water. ADEQ is adding language to this effect in A.A.C. R18-9-A309(A)(11), as well. Third, as a rule, "the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site treatment facility so the facility may handle the combined black water and gray water flow." R A.A.C. 18-9-D702(C)(11) (in the Type 3 gray water permit for residential or commercial gray water flows of 400 to less than 3000 gallons per day); *see also* A.A.C. R18-9-D701(A)(11) (in the Type 1 gray water permit for residential use for gray water flows less than 400 gallons per day). In addition, the 2005 rulemaking preamble stated: *"[I]f gray water is reused under R18-9-711 or R18-9-719, the remaining wastewater from the property—kitchen wastewater—still must pass through an interceptor into the subsurface disposal works. In this situation, the interceptor may be sized smaller but the design flow and, hence, disposal trench or bed size, is the same as if gray water is not being reused."* 11 A.A.R. 4544, 4579 (Nov. 15, 2005) (emphasis added). Therefore, all flows, black and gray, whether residential or commercial, must be accounted for to size an on-site wastewater treatment and disposal system. However, this explicit statement only exists in the gray water rule requirements in Article 7, and the current on-site rules simply cite to and mandate compliance with Article 7 in its entirety.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
			For example, in A.A.C. R18-9-E303(A)(3)(a), a prerequisite to using a composting toilet is "if gray water is separated and reused, the gray water [must comply] with 18 A.A.C. 9, Article 7." For clarity, therefore, ADEQ is adding additional notice in the rules that facilities must account for both gray water and black water flows when sizing systems. This would apply to, for example, the sizing of trenches or beds for 4.03 composting toilet permits since the sizing of trenches or beds are based on the total wastewater design flow as indicated in the design flow column of the table in A.A.C. R18-9-E303(F)(1)(e)(i), without regard to the interceptor size, as required by A.A.C. R18-9-E303(F)(2)(b). To further ensure clarity, ADEQ is adding references in other locations of the rule to highlight instances where the consideration of wastewater characteristics of a combined gray and black water flow is also necessary.
Conventional Technologies Used with Alternative Technologies	A311(A)("4")	Clarification	Often, alternative technologies are used in tandem with conventional septic tank system and/or gravity disposal technologies. The only location where septic and/or gravity disposal technologies are fully described and prescribed is in R18-9-E302. Therefore, ADEQ is adding language to ensure that as a general rule, septic tanks and disposal works are designed according to A.A.C. R18-9-E302, which includes references to R18-9-A314 for the septic tank design. However, if the specific rules applicable to technologies for A.A.C. R18-9-E303 through -E322 conflict with requirements in -E302, those requirements would apply. For example, 4.02 permit requires the treatment train to be a septic tank followed by disposal via gravity using a trench, bed etc. Other permits such as the 4.12 permit requires a deviation from this treatment train by inserting another technology, a textile filter, in between the septic tank and dispersal field treatment train.
Modified version of 4.02 facility as sole treatment	A311(C)	Clarification	ADEQ added language here to clarify that this subsection is only referring to modifying a septic tank and disposal system if it is the sole method of wastewater treatment and disposal at the facility. Only modifications to a conventional system as the sole treatment and disposal would require an A.A.C. R18-9-A312(G) analysis and approval.
Typographical Error – citation to	A311(C)(2)(b)	Correction	The citation in A.A.C. R18-9-A311(C)(2)(b) refers to vertical separation, and as such, the citation to A310(D)(2)(**c**) should be

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: <u>General Design Requirements</u>
vertical separation			corrected to A310(D)(2)(**<u>b</u>**).
Setback (1) building "decks" includes "pool deck"	A312(C) setback table	Clarification	County partners have indicated that they receive several questions about how and to what setbacks should be applied. In this rulemaking, ADEQ is clarifying the application of three types of setbacks: from buildings or decks (including pool decks), canals, and holding tanks. In line item "1. Building," ADEQ's interpretation has been that pool decks are already covered under that setback as "decks." However, because there has been stakeholder confusion, ADEQ is adding clarifying language that the setback for "decks" applies to pool decks. This interpretation is appropriate given the likelihood of accumulation of water near a pool. Pool decks are sloped to direct flow from a precipitation event or when persons are utilizing the pool for water sports or otherwise entering and exiting the pool. Additional water accumulation can contribute to ponding, which may impact the pool structure, and may also adversely impact the ability of an OWTF to function properly, possibly leading to unsanitary conditions near a swimming pool.
Setback (6) – canals – measured from edge	A312(C) setback table	Clarification	In line item "6. Lake, reservoir, or canal," canals are mentioned in the title but how to treat the canal water line is not prescribed. This rulemaking corrects this absence of description by prescribing that the setback is measured horizontally from the edge of a canal, a manmade artificial waterway.
Setback (10) – domestic water line includes domestic water holding tanks	A312(C) setback table	Clarification	In line item "10. Domestic service water line," ADEQ's interpretation has been that water holding tanks would be a part of the water line system. However, the rule could be clearer to demonstrate this intention. Therefore, ADEQ is adding language to clarify that the setback in this line item applies to domestic water holding tanks.
Typographic error in SAR conversion table introductory language	A312(D)(2)(a) (introductory language to the table)	Correction	The introduction language to the percolation rate to SAR conversion table in A.A.C. R18-9-A312(D)(2)(a) only cites subsection A.A.C. R18-9-A310(F). However, an applicant that conducts percolation testing for seepage pits according to R18-9-A310(G) would also input their results into the table. Therefore, ADEQ is adding this reference to correct this omission.
Clarify why	A312(D)(2)(b)	Clarification	Over the years, the word "pit" has been in the soil characteristics table

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
"pit" is in soil characteristics table	(introductory language to the table)		in A.A.C. R18-9-A312(D)(2)(b). This table should never be used as the primary table for identifying an SAR in a pit. However, ADEQ believes that under certain circumstances it may be appropriate for an applicant to augment and inform seepage pit percolation rate determinations with a soil characteristics analysis, in addition as the required procedure described in A.A.C. R18-9-A310(G). Therefore, ADEQ is adding clarifying language to this effect.
Require an applicant to use the most conservative SAR	R18-9-A312(D)(2)("c")	Clarification /Technical Update	At this time, the rule does not specify how to apply the table in A.A.C. R18-9-A312(D)(2)(a) when an applicant's percolation rate determined under A.A.C. R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in the table. ADEQ has evaluated the silence in the rule and at this time has concluded that if the percolation rate determined under A.A.C. R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in subsection (2)(a) above, the applicant must use the higher of the two listed percolation rates to correlate to the most conservative SAR. ADEQ has considered various other means of clarifying the rule, including allowing linear interpolation between two consecutively listed values to a correlated SAR. However, at this time, the Department and delegated agencies do not have enforceable means to allow an applicant to apply linear interpolation principles to obtain an intermediate value. The percolation rate is based on rule-specified measurements, and in some cases, also calculations. *See* A.A.C. R18-9-A310(F) and (G). The percolation rate is then converted into an SAR via the table in A.A.C. R18-9-A312(D)(2)(a). Since "SAR" is a variable in calculating the soil absorption area, allowing interpolation for the value of "SAR" would introduce even more opportunities for error. *See* A.A.C. R18-9-A312(D)(1); *see also, e.g.*, A.A.C. R18-9-E302(A)(4)(a) (for chambers) and A.A.C. R18-9-E302(5)(k) (for seepage pits). However, given the nature of percolation rate testing and measurements, there are limited practical or economical ways to ensure that measured and calculated values are precise and accurate enough to allow for an interpolated SAR at this time. ADEQ's main concern is that an inappropriately low SAR would pose a threat to human health and the environment because the soil absorption area would not be adequate to accept OWTF disposal

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
			outflows. ADEQ will consider additional future input from stakeholders and workgroups, but at this time the Department will require the most conservative value for purposes of converting the percolation rate to an SAR. This approach is the most reasonable interpretation at this time to protect human health and the environment, and it should improve permit review times, as well as resolve current and future conflicts in interpreting appropriate application of the table in R18-9-A312(D)(2)(a).
Minimum vertical separation clarifications, conventional v. alternative treatment	A312(E)(1), (E)(2), (changes also impact (E)(2)(a), (E)(3)(c)(i), & (E)(4)(b))	Clarification	After review of some stakeholder comments, ADEQ determined that the minimum coliform concentration requirements based on vertical separation distance are somewhat ambiguous in their applicability and could be slightly modified for clarity. The two subsections, A.A.C. R18-9-A312(E)(1) and (2), establish the maximum allowable coliform concentrations of the disposal works' outflow to the native soil based on the vertical distance from the bottom of the disposal works to the seasonal high-water table at the facility's location. A.A.C. R18-9-A312(E)(1) applies to conventional systems, and A.A.C. R18-9-A312(E)(2) applies to alternative systems. The table in A.A.C. R18-9-A312(E)(2) is very clear that if the effluent is nominally free of total coliform, the separation distance between the discharge point and the seasonal high-water table is 0'. However, alternative systems are often combined with conventional system technologies to improve wastewater treatment or facilitate disposal, and currently the rule is unclear as to which rule table applies when conventional system technologies are combined with alternative system technologies to treat and dispose of wastewater This rule change clarifies that A.A.C. R18-9-A312(E)(1) only applies to the situation where a septic tank and gravity disposal conventional system described in A.A.C. R18-9-E302 is the facility's sole method of treatment and disposal of wastewater. This clarification reflects the fact that conventional septic systems that are used as the sole method of treatment produce higher concentrations of coliform in treated water than alternative systems. Therefore, conventional systems' disposal works outflows pose more risk to the environment and health and safety the closer the disposal works are vertically located in relation to the water table. For this reason, the maximum allowable total coliform concentrations given available

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
			vertical separation requirements in the table in A.A.C. R18-9-A312(E)(1) are more stringent than the requirements for alternative systems. In fact, at some SAR levels, conventional system disposal works are not allowed at all at any vertical distance without alternative treatment, according to the table. However, if one of the alternative technologies from A.A.C. R18-9-E303 through -E322 is utilized, then the coliform concentrations are decreased, as are the vertical separation requirements in A.A.C. R18-9-A312(E)(2). Even if conventional technologies such as a septic tank and/or gravity disposal described in A.A.C. R18-9-E302 are appropriately utilized as a part of alternative systems, A.A.C. R18-9-A312(E)(2) will govern the minimum vertical separation requirements. This concept is also true for A.A.C. R18-9-A312(E)(3)(c), which governs the maximum allowable coliform concentrations at particular vertical depth to a subsurface limiting condition as applicable to alternative systems. A.A.C. R18-9-A312(E)(3)(c) will never apply a conventional system disposal works where the septic tank is the sole method of treatment because under that rule, unless an adequate alternative disinfection system is used, the *minimum* required depth to a subsurface limiting condition is four feet. *See* A.A.C. R18-9-A312(E)(3)(a)(i); *see also* 11 A.A.R. 4544, 4639 (Nov. 14, 2005) (listing of the reasons for nominally free wastewater at 1.5 feet and lower even though it does not follow the same logarithmic progression). Note that the 4.23 permit is not cited in this change. That is because the vertical separation requirements are specific to the technology used. The 4.23 permit described in A.A.C. R18-9-E323 is a consolidating umbrella permit for larger flow facilities or sites and does not introduce new technology. Therefore, unless otherwise specified in the A.A.C. R18-9-E323, requirements that apply to technologies described in A.A.C. R18-9-E302 through -E322 will also apply under the permit issued pursuant to A.A.C. R18-9-E323.
Hydraulic analysis	A312(E)(3)(c)(ii)	Information collection addition	A hydraulic analysis is conducted to demonstrate that the soil in the proposed OWTF location of the disposal works is sufficiently permeable to conduct wastewater vertically downward and laterally without surfacing. *See, e.g.*, Tyler, E.J., *Hydraulic Wastewater Loading Rates to Soil*, Abstract for 9th International Symposium on Individual and Small Community Sewage Systems (2001) available at https://www.soils.wisc.edu/sswmp/SSWMP_4.43.pdf. ADEQ is revising A.A.C. R18-9-A312(E)(3)(c)(ii) to require a hydraulic analysis

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
			in all designs where the depth of soil to a subsurface limiting condition is less than 4 feet. At the present time, a hydraulic analysis is not required if the SAR value is greater than 0.63 gal/day/sf. This exclusion is based upon the assumption that the soil is adequate for conveying the effluent away from the disposal site and preventing surfacing for any given SAR value greater than 0.63 gal/day/sf for any given soil depth less than four feet. This assumption is very questionable in some cases. Therefore, a hydraulic analysis is needed to confirm that the effluent will indeed not surface during the disposal process. A hydraulic analysis is a relatively simple analysis and should be a minimal burden.
Pipe materials	A312(F)(2)(c)	Technical Update	Currently, pipe material use is limited to HDPE, PVC, ABS, and clay. ADEQ intends to add language to allow other appropriate pipe materials and eliminate reference to piping material that is not used. Suitability of the pipe includes adequate durability.
Electrical code	A312(F)(3)("a")	Technical update	Because there is a risk of electrocution or fire from installation of electrical components, ADEQ agrees with stakeholders that electrical components should meet some sort of electrical standard when installed. Delegated partners will likely be more familiar with the electrical code incorporated in the local building code in the county where the facility is located. For these reasons, ADEQ is adding language to the requirements for electronic components in OWTFs in A.A.C. R18-9-A312(F)(3)(a) requiring the installation of components to comply with the local building electrical code applicable in the county in which the OWTF is installed. This does not apply to components themselves that are supplied by proprietary product manufacturers. Rather, this requirement applies to the connections between electrical components, such as to the wiring connecting the control panel to the pumps and aerators and the wiring between the service entrance and the control panel.
Interceptor formula	A315(B)(1) & (B)(3) – (interceptor design, generally) E303(F)(1)("a") – (interceptor design when using a	Clarification	ADEQ is adding language to the interceptor design requirements to clarify the types of flows that an interceptor may not receive, namely human excreta or toilet wastewater. Stakeholders have expressed confusion regarding the formula for sizing interceptors for restaurants based on requirements in A.A.C. R18-9-A315. Specifically, it was expressed that the rule is unclear regarding the fact that an interceptor is not intended to accept human excreta or toilet wastewater. An interceptor should be placed immediately after a kitchen disposal conveyance, and before joining with any disposal conveyance from any

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: General Design Requirements
	composting toilet permit)		toilet wastewater source so that no toilet wastewater is directed into an interceptor. For this reason, ADEQ is adding some minimal language to clarify this fact as a matter of good design judgment. For example, ADEQ added the word "applicable" in the equation variable definitions in A.A.C. R18-9-E315(B)(3)(b) to highlight that not all sources from a restaurant should be included in a restaurant flow, especially toilet flow. Likewise, interceptors used in the disposal works at a facility using a composting toilet are intended for use for the non-toilet wastewater and should not accept human excreta or toilet wastewater. Although the table in A.A.C. R18-9-E303(F)(1) indicates that the sizing for the interceptor is for non-toilet wastewater, there is no explicit statement in the rule that an interceptor may not accept human excreta or toilet wastewater. Therefore, ADEQ is adding clarifying language to that effect in E303(F)(1) to provide better notice to the public of this prohibition.

Table 8 of Explanation of Changes: A312(G) Alternative Design Features Process

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Alternative Design Features Process per A312(G)
Specified PPL approved deviations from GP do not also need an A312(G) analysis	A312(G)	Clarification	ADEQ is adding language to clarify that if aspects of a technology vary from specific general permit requirements and are already approved for listing on the proprietary products list maintained under A.A.C. R18-9-A309(E), then an applicant may use the listed proprietary product in a permit without requesting review under A.A.C. R18-9-A312(G). Currently, it is not clear that using a listed product allows an applicant to bypass the A.A.C. R18-9-A312(G) for the alternative features specifically approved via the proprietary product listing. However, only those features specifically approved in the proprietary product listing are approved for use without an A312(G) analysis. If use of a listed product requires additional variances from a specific general permit, then the applicant must make a request for the Department to authorize use of those alternative features in the submitted design. Likewise, a project proponent may not modify a design feature of a listed product unless either an A.A.C. R18-9-A312(G) analysis is sought and approved, or a new proprietary product listing is requested and listed. Some current proprietary product listings already anticipate the need for an additional approval for some features under A.A.C.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Alternative Design Features Process per A312(G)
			R18-9-A312(G). For example, the Eljen Geotextile Sand Filter indicates that if a pump or siphon is used to convey wastewater to the distribution box, then an A312(G) approval is needed because this is an additional alternative feature to the 4.09 general permit. See page 4 of the proprietary product listing for the Eljen product, which is available at: https://static.azdeq.gov/er/prop/eljen_cert.pdf.
Alternative setbacks for conventional systems and 4.23 permitted facilities	A312(G)(7)	Clarification	The criteria in A.A.C. R18-9-A312(G)(7) applies for obtaining a reduced setback for an alternative system. It is also ADEQ's position that the current rule already allows for reduced setbacks for conventional systems, if appropriately justified under the criteria in A.A.C. R18-9-A312(G)(1) through (G)(6). However, the current language is confusing and over complicates how the requirements apply for each system type. This rulemaking attempts to clarify (G)(7) so that the criteria in (G)(7) simply applies for all facilities, conventional and alternative alike. Setbacks that would apply for other facilities would also apply under 4.23 permits, ADEQ is also adding language to clarify that OWTFs may obtain reduced setbacks for facilities authorized to operate under 4.23 permits, if appropriately justified under A.A.C. R18-9-A312(G).

Table 9 of Explanation of Changes: Conventional System Designs

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Conventional System Designs
Julian dating – septic tank	A314(1)(l)	Technical update	Currently the rule requires septic tanks to be permanently and clearly marked with, among other information, the month and year that a septic tank was manufactured. Based on comments, it appears that some current tank manufactures mark septic tanks with a Julian date, instead of using a date from the conventional day-to-day Gregorian calendar (*e.g.*, February 18, 2022). A Julian "date" is the number of days since January 1, 4713 B.C.E., which is the conventional calendar used on a day-to-day basis (*e.g.*, 22049 is the equivalent of February 18, 2022). *See Britannica.com*, "Julian period," available at https://www.britannica.com/science/Julian-period (last visited Jan. 28, 2022). An example of common use of Julian dating is in dating food, and several converter calculators are easily available online. Therefore, ADEQ is adding the option for marking septic tanks with a Julian date, as well.
Septic tank standard	A314(2)(c) & (2)(d)	Technical update	Stakeholders have noted that the standards for fiberglass or plastic septic tanks are out of date and have recommended ADEQ adopt the more updated

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Conventional System Designs
updates			standards. ADEQ is therefore proposing updating these standards. The updated 2019 thermoplastic standard will broaden the types of plastics that may be used for septic tanks, and it is more current with the types of tanks manufactured today. The prefabricated concrete septic tank standard is also simply being updated, with minimal changes, to the 2020 standard.

Table 10 of Explanation of Changes: Alternative System Designs

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Alternative System Designs
Pressurization panel location	E304(D)(2)(c)(i)	Technical Update	Currently, pressurization panels are required to be mounted in an exterior location visible from a dwelling. However, owners of an OWTF with a pressurization control panel often do not want the panel plainly visible in the middle of a landscaped yard. The change in this rulemaking simply acknowledges and also allows conspicuous placement of the panel on the side of or adjacent to the building served.
Pressure Distribution alarm – electrical connection	E304(D)(2)(d)(iii)	Technical Update	The requirement that alarms, test feature, and controls be on a non-dedicated electrical circuit associated with a frequently used household lighting fixture is impractical and can conflict with electrical codes. The intent is to ensure that somehow those persons in the structure served are (1) aware there is constant power to the system, and (2) would be adequately alerted if there is an issue with the pressure distribution system, even if the power to the distribution system is disrupted. ADEQ is modifying the language so that alarms or controls do not have to be associated with or on the same circuit as a frequently used household lighting fixture. However, there must be some constant visual display on the control board indicating the circuit to the system is electrically active (e.g., continuous light). Also, alarms must be audible and visible from inside the structure served. The requirements in this rule have conflated the control board and alarms and these clarifications attempt to clarify the difference in requirements between them.
Vault & Haul add "or" for prerequisites	E314(A)(1)	Correction/ Clarification	Currently, there are two situations under which a vault and haul system is allowed to be installed pursuant to A.A.C. R18-9-E314(A)(1). While the prerequisites are implicitly disjunctive, the rule does not currently contain an explicit "or" between the two subsections. This rule adds an "or" to clarify when a vault and haul

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Alternative System Designs
			system may be installed.
Vault and Haul – non-soil related operational constraints	E314(C)	Clarification/ Technical update	ADEQ has become aware that there may be operational constraints at a facility that affect treatment at a site, but have nothing to do with the soil site investigation. For example, national parks have limited ability to control what patrons insert into an OWTF, and many objects, such as diapers, can adversely impact treatment. Therefore, such facilities should not be required to do a site investigation to install a vault and haul system.

Table 11 of Explanation of Changes: 4.23 Larger Flow Permits

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: 4.23 Larger Flow Permits
4.23 – administrative permit clarifications	E323(A) & (H)	Clarification	ADEQ is adding minor editorial language to further clarify that the 4.23 permit is an all-encompassing permit that applies to the construction and use of one or more new facilities at a site if the site either currently has or will have a design flow of 3,000 gallons per day up to 24,000 gallons per day given the proposed facility/facilities. If multiple facilities are located or proposed to be located at the site, the cumulative flow of the facilities is determined pursuant to A.A.C. R18-9-A309(A)(10). The 4.23 permit supersedes the necessity for an applicant to apply for several new authorizations under specific general permits in A.A.C. R18-9-E302 through -E322. Rather, the 4.23 permit authorization allows design, construction, and operation of various facilities under one permit, as long as the design requirements for each specific general permit are followed as if permitted separately, and other limitations as otherwise specified in A.A.C. R18-9-E323 are followed (e.g., limitations on disinfection devices other than ultraviolet treatment technologies).
4.23 – disinfection device and aerobic treatment clarifications	E323(A)(3)(a) & (A)(3)(b) & E320(A)(1)	Technical Update, Clarification, & Conforming Change	The rule is currently not as clear as it could be with regards to when aerobic systems are allowed at a site with larger flows under a 4.23 permit. ADEQ is modifying the language to clarify that aerobic systems are not allowed under a 4.23 permit at all, regardless of the type of disposal (surface or subsurface). The rule currently includes disposal type qualifications that are superfluous and confusing in that they seem to refer the reader to surface or subsurface drip systems under A.A.C. R18-9-E321 and -E322. Little is written about the exclusion of aerobic systems from 4.23 permits, but the 2005 rulemaking final redline indicates that the purpose of including both terms "surface" and "subsurface" was to pay homage to the combination of two aerobic

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: 4.23 Larger Flow Permits
			general permit types that were previously A.A.C. R18-9-E315 (aerobic for surface disposal) and R18-9-E316 (aerobic for subsurface disposal). The most recent comprehensive study regarding compliance of aerobic systems in Arizona is an ADEQ-commissioned survey from the Yavapai County Office of Environmental Services Division, *ADEQ-YCES Aerobic Systems Survey 1996-1997*. That study, done for randomly chosen aerobic systems in Yavapai County over the years 1996-1997, found that most aerobic systems were out of compliance based on sampling, surveys, and inspection. Therefore, given that data, aerobic systems should still not be allowed under the 4.23 permit today. The question of whether to allow aerobic systems under a 4.23 permit in the future is a substantive matter that needs more discussion and research in the technical workgroup process. Also, as a technical update, ADEQ is allowing radiation disinfection devices (i.e., ultraviolet light disinfection devices) to be used under a 4.23 permit. Ultraviolet light disinfection devices require minimal maintenance, such as lamp replacement and ensuring the lamp sleeves remains clean. Other disinfection devices remain prohibited under a 4.23 permit because of the high level of maintenance and operational steps required for those devices in the context of the risk that a larger flow inherently poses to groundwater. The change to A.A.C. R18-9-E320(A)(1) is just a conforming language change, to clarify that current technology used in onsite disinfection is "ultraviolet" radiation.

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

ADEQ relies on no new studies to make these rule changes. ADEQ did review a study that was previously evaluated in 2005 evidenced by stakeholder references to the study in the 2005 rulemaking. *See* 11 A.A.R. 4544, 4649-50 (Nov. 14, 2005). The study is mentioned here in "Table 11 of Explanation of Changes" above and is an ADEQ-commissioned survey from the Yavapai County Office of Environmental Services Division, *ADEQ-YCES Aerobic Systems Survey 1996-1997*. That study, done for randomly chosen aerobic systems in Yavapai County over the years 1996-1997, found that most aerobic systems were out of compliance based on sampling, surveys, and inspection. This study is on file with the Department.

Another study that was contemplated in previous rulemakings and is also cited here regarding soil

absorption rates and hydraulic analyses is Tyler, E.J., *Hydraulic Wastewater Loading Rates to Soil, Abstract for 9th International Symposium on Individual and Small Community Sewage Systems* (2001) available at https://www.soils.wisc.edu/sswmp/SSWMP_4.43.pdf

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. These amendments do not diminish a previous grant of authority of a political subdivision of this state.

9. The economic, small business, and consumer impact:

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An identification of the rulemaking:

The Arizona Department of Environmental Quality (ADEQ) is amending Title 18, Chapter 9, Articles 1 and 3 of the Arizona Administrative Code (A.A.C.) to provide additional clarity and notice, correct previous errors, collect additional necessary information, and make minimal technical updates to the On-site Wastewater Treatment Facility (OWTF) general permit program or "on-site program." These changes are expected to increase efficiencies in program implementation for both customers and regulators.

The following is an explanation of:

(a) The conduct and its frequency of occurrence that the rule is designed to change.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

Regulators at the state and county level are asked questions on a daily basis to clarify various provisions of the on-site program rules. Answering these questions or answering them inconsistently is causing hours in rework for both customers and regulators alike. These rule changes are, for the most part, an attempt to clarify ADEQ's positions on how the current rules should be implemented. Where actual changes are made to the rule, the change does not exceed expected industry standards to ensure appropriate engineering and design (e.g., requiring drainage information). This rulemaking is intended to further clarify confusion created by dissonance between industry standards and the current rule language. ADEQ hopes that this rulemaking as a whole will alleviate time spent by regulators and customers to align on the current meaning of the rules, and rather focus on future rule changes to more broadly improve the OWTF permitting program, as approved by the Office of the Governor on October 25, 2022 pursuant to A.R.S. § 41-1039.

B. A brief summary of the EIS:

The overall impact of the proposed changes should be minor. The changes are intended to improve clarity, correct errors, and to better align with current industry standards. The clarifications and correction of errors should benefit everyone, but particularly OWTF permittees, who read and interpret the rules. Persons most affected by this rulemaking are current and future permittees under the OWTF permitting program. Overall, the changes are clarifications of the current state of the program. ADEQ anticipates that a few of the rule changes may have a very limited impact, likely at low-cost relative to benefit.

C. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:

Stakeholders for this rulemaking include home and other property owners, wastewater system designers and manufacturers, septage pumpers and haulers, sanitarians, local regulatory agencies or health departments (especially in those counties with delegated authorities under these rules), wastewater system engineers, contractors and developers (typically in rural or suburban areas), and the general public.

The stakeholders most likely affected by these rule changes are ADEQ's delegated county partners implementing this program on ADEQ's behalf, and designers of on-site wastewater treatment facilities.

D. Cost/benefit analysis:

This cost/benefit analysis includes an analysis of the probable costs and benefits to:

- The implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking, including the number of new full-time employees (FTEs) necessary to implement and enforce the rule.
- A political subdivision of this state directly affected by the implementation and enforcement of the rulemaking.
- Businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking.
- Other stakeholders directly affected by the rulemaking

The cost/benefit analysis consists of two parts. Part I is a Cost/Benefit Stakeholder Impact Matrix to summarize impacts, and Part II consists of additional detail to explain impacts, as necessary.

Part I - Cost/Benefit Stakeholder Matrix:

Estimates indicate the costs or benefits to individual entities, unless otherwise indicated.

Minimal	Moderate	Substantial	Impactful

$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.

Description of Affected Groups	Description of Effect	Cost Increase/Decreased Revenue	Benefit /Decreased Cost/Increased Revenue
A. State and local government agencies directly affected by the implementation and enforcement of the rulemaking			
ADEQ and delegated implementing agencies	Improved implementation and enforcement of the OWTF program. Predictability, reduced transaction costs, and responsiveness to stakeholders. Staff time spent to adjust rule interpretation and implementation according to clarifications in this rulemaking. Support of ADEQ's mission to protect and enhance public health and the environment.	Impactful Impactful	 Minimal, if any. New FTEs are not needed as a result of the rulemaking Impactful
Other state or other agency permittees	Same as that for Political Subdivisions below.		
B. Political subdivisions directly affected by the implementation and enforcement of the rulemaking			
Political subdivisions generally	Clarification and correction of errors and reduction in time spent going back and forth with the implementing agency on the meaning of a particular rule. Reduction in delays in issuing permit coverages. Cost of complying with new rules as a whole.	 Minimal, if any Minimal, if any	Impactful Impactful
C. Businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking			
Entities operating under current general permits	Clarification and correction of errors and reduction in time spent going back and forth with the implementing agency on the meaning of a particular rule. Reduction in delays in issuing permit coverages. Cost of complying with new rules as a whole.	 Minimal, if any None	Impactful Impactful

Description of Affected Groups	Description of Effect	Cost Increase/Decreased Revenue	Benefit /Decreased Cost/Increased Revenue
Entities applying for new or modified coverage under general permits	Clarification and correction of errors and reduction in time spent going back and forth with the implementing agency on the meaning of a particular rule. Reduction in delays in issuing permit coverages. Cost of complying with new rules as a whole.	 Minimal, if any Minimal	Impactful Impactful
C. Other stakeholders directly affected by the rulemaking			
Land and building owners served by OWTFs	Cost of complying with new rules as a whole.	Minimal, if any	
General Public	Economic and social benefits of clean water.	Minimal, if any	Impactful

Part II - Additional detail to explain impacts listed above, as necessary

Regarding the probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking, no additional information is necessary. None of the rule changes should have a particularly impactful effect on delegated agencies of political subdivisions. Some of the changes solidify already established Departmental interpretations of the current rule language, and the changes made here are merely clarifications.

Regarding businesses in the on-site industry, and land and building owners served by OWTFs, the following are specific rule changes that may most directly entail potential costs or benefits.

All impacts described are anticipated to be no more than minimal.

NOI Pretreatment report - A309(B)(6)

Currently, no pretreatment report is automatically required in all cases, but proposed pretreatment is still reviewed to ensure the pretreatment produces “typical sewage” so that a facility qualifies for permit coverage under a general permit. A pretreatment report ensures this review occurs in as little time as possible. This rule change simply provides clearer notice of the need for pretreatment details. ADEQ believes requiring a pretreatment report is minimally burdensome, is necessary to verify that the proposed pretreatment is appropriate for use with the chosen OWTF technology, and that the ultimate treated water will meet applicable performance standards. This should not be a costly or grossly time consuming addition at all, and will save time and money on subsequent discussions between the designer and the regulating agency.

NOI Drainage and erosion information - A309(B)(2)(b)(iv) & A309(B)(6)(a)(v)

Erosion or saturated soil can adversely affect a OWTF's treatment effectiveness. ADEQ anticipates that most designers are already reviewing drainage information to ensure appropriate placement and that a designer should usually be able to comply with this requirement easily with very little cost, especially balanced with the benefit of ensuring an OWTF's treatment is effective. OWTFs adversely affected by drainage are unable to operate properly as the soil is unable to properly filter, treat, and convey wastewater away from the dispersal site. In cases where further technical evaluation is necessary, it would be necessary for approval of coverage with or without this rule change. This rule change simply provides clearer notice. This is an aspect of the system that permit reviewers already consider when evaluating the appropriateness of coverage for the proposed system and ensuring that the applicant ensures that the OWTF is located and designed using "good design judgment" according to A.A.C. R18-9-A312(A)(1). Therefore, providing this information at the start of the process will help to save the permittee time in receiving a Construction Authorization.

RFDA/COC clarifications – A309(C)(1) & A309(C)(2)

This change is important to ensure clarity and consistency across all delegated agencies. ADEQ has never interpreted this rule to mean that a county representative could sign off on construction on correctness of installation on behalf of the owner. *It would be a conflict of interest for* a representative from an entity regulating the applicant, such as a delegated county's inspector, to act as an agent on behalf of the applicant as this would disrupt the regulatory thread back to the applicant. This rule clarification may disrupt current processes for one or more delegated entities but will maintain clarity and certainty regarding the responsible party in the instance that any compliance action is necessary, likely saving legal fees and protecting the environment. Further, the Director has already expressed this interpretation of the current rule with these agencies and in a substantive policy: *Appropriate Signatories for Certifications in A.A.C. R18-9-A309(C)(1)(b) and A.A.C. R18-9-A309(C)(2)(f)*; Policy No. 3004.2021 (effective Feb. 7, 2022), https://static.azdeq.gov/legal/subs_wqpermits_signatories.pdf.

100-year flood zone qualification for subsurface limiting conditions - A310(C)(2)(d)

This change should save time and money. Right now, it is assumed that a surface limiting condition exists if ***any portion*** of a 100-year flood hazard zone is located on the property on which the OWTF is installed. A property could be quite large. Therefore, a site investigator should further be able to inspect whether the flood zone is near the OWTF and may adversely affect the ability of the facility to function properly before it's designated a surface limiting condition. This will prevent unnecessarily required improved treatment at the site.

Require an applicant to use the most conservative SAR - R18-9-A312(D)(2)("c")

At this time, the rule does not specify how to apply the table in A.A.C. R18-9-A312(D)(2)(a) when an applicant's percolation rate determined under A.A.C. R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in the table. ADEQ has

evaluated the silence in the rule and at this time has concluded that if the percolation rate determined under A.A.C. R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in subsection (2)(a) above, the applicant must use the higher of the two listed percolation rates to correlate to the most conservative SAR.

ADEQ has thoroughly evaluated other options, such as interpolation, but has concluded, in part based on comments during the drafting phase, that ADEQ does not have enough additional soil data to conclude that intermediary interpolated numbers are scientifically appropriate. Even if ADEQ concluded it could be scientifically appropriate to interpolate based on data from soil types or statewide testing data, the process to ensure that SAR values are calculated precisely and accurately enough to allow for an interpolated SAR would be overly burdensome and the precise and accurate inputs unmeasurable. Significant figures would need to be used in measurement and calculation for accuracy and preciseness.

Currently, percolation rates are listed in terms of three significant figures according to the rule table in A.A.C. R18-9-A312(D)(2)(a). If following significant figures here, to interpolate a soil absorption rate properly, a percolation rate would need to be measured to three significant figures for precision. However, the rule is not consistent in its use of significant figures. Also, in the field, one would need to measure the percolation rate to one hundredth of a minute, i.e., 0.6 seconds, for a soil absorption rate to be precise enough to be scientifically defensible. This level of rigor of measurement is not currently being done in the field, nor has it been expected in the past. Someone could not measure accurately to one hundredth of a minute in the field without somewhat costly technology. At this time, stakeholders have expressed that the technology required is an unreasonable option, and some have also expressed that regardless, percolation testing itself is not accurate enough to allow for interpolation. Therefore, given the controversy of the subject at this time, using the most conservative value is the most practical and efficient method to identify the percolation and soil absorption rates. This will keep field instrumentation costs to a minimum and is necessary to protect the environment by ensuring a drainage area is sized appropriately for the volume of wastewater.

Hydraulic analysis - R18-9-A312(E)(3)(c)

Requiring a hydraulic analysis for every design, regardless of the soil absorption rate, ensures that designs are adequate for a particular site and soil composition at the site. It is important to make sure that soil can adequately carry wastewater away from the site, and that soil treats microorganisms before conveyance to groundwater and that unfiltered wastewater does not surface. A hydraulic analysis is relatively simple, especially where a subsurface limiting condition is less than four feet below the bottom of the disposal works, as is the case in A.A.C. R18-9-A312(E)(3)(c) and should present a minimum necessary burden to ensure that wastewater is adequately treated and conveyed away from the disposal site.

Electrical code requirements - A312(F)(3)("a")

Pursuant to this rulemaking, permit coverage applicants must meet the applicable county electrical standard for connections between electrical components in an on-site system to ameliorate risks of fire and electrocution from installation of electrical components and ensure continued proper operation of the on-site system. It is likely these codes are already applied in the respective counties, but this rule change solidifies the authority to ensure that facilities are installed correctly to minimally protect health, safety, and continued system operation. This rule change may have a minimal impact on installation costs, but a more than minimal impact is not anticipated.

Alternative setbacks for conventional systems and 4.23 permitted facilities - A312(G)(7)

This rule change would more clearly allow applicants to make greater use of the land they own by allowing decreased setbacks for simple conventional systems, as well as alternatives, if appropriate. However, this is merely an example of one of many "clarifications" of existing rule language in this rulemaking. These "clarifications," as identified in the rulemaking preamble section-by-section description tables, will save both applicants and regulators time and money in attempting to agree on the meaning of specific rules.

Julian dating – Septic Tank - A314(1)(l)

ADEQ is adding the option to allow installation of septic tanks marked with a Julian date, which is the number of days since January 1, 4713 B.C.E., instead of a Gregorian date, such as February 18, 2022. This will allow more tank manufacturers to sell otherwise appropriate tanks in Arizona and will also allow applicants to expand their choice of tank to the best or most economical option available. In sum, this will not impose additional economic burden, but rather has the potential for economic benefit to homeowners and business owners.

Septic tank standard updates (allowing thermoplastic) - A314(2)(c) & (2)(d)

The septic tank standard modification that allows thermoplastic tanks simply provides additional options of appropriate useable septic tanks. This potentially economically benefits manufacturers, business owners, and allows applicants to expand their choice of tank to the best or most economical option available while equally protecting the environment.

Pressurization panel and alarm - E304(D)(2)(d)(iii)

This change involves a change in how pressure distribution system alarms operate, ensuring that visual alarms are installed more safely. This rule change also makes it clear that audible alarms now are required inside the structure served in addition to visual alarms. The addition of an audible alarm is not anticipated to create even a minimal burden on designers or homeowners.

Vault and haul – E314(C)

Soil investigations may be costly in some cases. Pursuant to R18-9-E314(A)(1), at some locations the reason to install a vault and haul system is due to operational constraints, and not the soil quality at the site itself. Therefore, if the reason for the operational constraint would exist regardless of the results of the site investigation, the site investigation would be an unnecessary burden and a waste of money. Therefore, in the few cases to which this would apply, this technical update could save the applicant money in applying for permit coverage.

E. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rule making.

ADEQ estimates this rulemaking will not have an impact on public or private employment.

F. A statement of the probable impact of the rulemaking on small businesses.

Pursuant to A.R.S. § 41-1055(B)(5), ADEQ must discuss items *(1)* through *(4)* below to address the probable impacts of this rulemaking on small businesses.

Note that by statutory definition, "small business," is a "concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations." A.R.S. § 41-1001.

(1) An identification of the small businesses subject to the rulemaking.

- On-site applicants for on-sites owned by small business property owners (e.g., law office), and
- On-site facility professionals, including:
  - Designers, including engineers,
  - Site investigators or drillers for site investigations.
  - Installers,
  - Maintenance professionals,
  - Septage pumpers and haulers, and
  - Notice of Transfer inspectors.

(2) The administrative and other costs required for compliance with the rule making.

Small businesses may need to make some modifications to their design processes or records to comply with the rule changes, but costs to do so should be minimal.

(3) Addressing the following methods prescribed in A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses:

(a) Establishing less stringent compliance or reporting requirements in the rule for small businesses.

The rule changes in this rulemaking are as minimal as possible to protect public health and the

environment.

(b) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

The rule changes in this rulemaking are as minimal as possible to protect public health and the environment. Schedules and deadlines are not impacted.

(c) Consolidating or simplifying the rule's compliance or reporting requirements for small businesses.

This rulemaking is not a significant rulemaking and changes made are intentionally minimal to have the minimum substantive and procedural impact on all those persons and businesses regulated under the on-site program. Compliance and reporting requirements for small businesses are already as minimal as possible under the current rule framework.

(d) Establish performance standards for small businesses to replace design or operational standards in the rule.

This rulemaking does not modify the framework of the on-site program, which is mostly based in design standards. However, there are plans to modify the program in a future rulemaking and move towards a more performance standards-based program.

(e) Exempting small businesses from any or all requirements of the rule making.

OWTFs are generally owned, operated, maintained, designed, inspected for sale, and installed by either small businesses or individual homeowners. It is crucial to the integrity of the program that small businesses are subject to these rules in order to protect health and the environment.

(4) The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking, as part of the discussion of impact of the rulemaking on small businesses pursuant to A.R.S. § 41-1055(B)(5)(d).

The probable costs and benefits to private persons and consumers, including those related to small businesses, is described above. All anticipated costs and benefits should be minimal, if any. This rulemaking is not intended to be significantly substantive. Some changes that appear substantive are actually merely clarifications of existing rule, except as described in the economic statement above.

G. A statement of the probable effect on state revenues.

This rulemaking should not result in a significant impact in state revenues.

H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

This rulemaking is the least intrusive and costly means possible to achieve the same objectives.

I. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is

acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

Any data or reasoning upon which this rulemaking is based is identified in Tables 1 through 11 in the "Section by Section Explanation of Changes in this Rulemaking" portion of this preamble located in Part 6. Generally, no new data was introduced or reviewed to make these rule changes.

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

R18-9-A309(A)(12) – There was a typo here "and applicant" is changed to "an applicant."

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

Comment 1: Dave Lentz, Infiltrator Water Technologies, letter dated October 11, 2022, Regarding septic tank changes in R18-9-A314

Infiltrator Water Technologies (Infiltrator) supports the proposed amendments to R18-9-A314(2)(c) and (2)(d) pertaining to the standards for septic tanks. The proposed changes will align Arizona's onsite wastewater system rules with the types of tank materials being offered nationally and described in North American prefabricated septic tank standards. The amendments will also provide references to current-day manufacturing standards.

ADEQ Response 1:

Thank you for your comment.

Comment 2: Dave Lentz, Infiltrator Water Technologies, letter dated October 11, 2022, Regarding septic tank changes in R18-9-A314

Please note that consensus standards published by ASTM International and the International Association of Plumbing and Mechanical Officials (IAPMO) are updated and republished on regular cycles, meaning that when republication occurs with a new date associated with the title of the standard, the standard reference in the rules becomes obsolete. When a new standard is published, the former standard is no longer in existence and typically cannot be purchased from the publisher of the standard. To avoid this situation, states sometimes remove the date suffix from the title of the standard and follow the title with "as amended."

ADEQ Response 2:

Your concern is noted and understood. However, Arizona statute specifically mandates that incorporated material, such as an ASTM standard, must identify the incorporated version date, and "state that the rule does not include any later amendments or editions of the incorporated matter." A.R.S. § 41-1028. Further, even in the absence of such statute, it is arguably an Arizona Constitution nondelegation issue to incorporate a mandated standard by reference without establishing the exact edition for compliance purposes. *E.g.*, *Gutierrez v. Indus. Comm'n*, 226 Ariz. 395, 398, 249 P.3d 1095, 1098 (2011). The rule at issue here, A.A.C. R18-9-A314, does encompass the mandatory

requirements for septic tank design standards.

Comment 3: Dave Lentz, Infiltrator Water Technologies, letter dated October 11, 2022 - Regarding new section R19-9-A311 (standards that apply if conventional technology is used with alternative technology)

The new section R18-9-A311(A)(4) could be interpreted that septic tanks are required to be installed any time an alternate technology listed in R18-9-E303 through R18-9-E323 is specified in a design. Products certified under NSF/ANSI 40 or 245 are tested using a specified treatment configuration; most include a pretreatment tank or chamber that provides the same liquid-solids separation function as a septic tank. The additional volume of the septic tank beyond what was tested during certification has the unintended potential to negatively impact the function and performance of the system and may result in the system being non-compliant with the NSF/ANSI 40 or 245 certification. Please consider revising the first sentence of this section to read:

> If either a septic tank or disposal method, or both, as identified in R18-9-E302, is appropriately used in combination with an alternative technology listed under R18-9-E303 through R18-9-E322 when a septic/pretreatment tank or chamber is not specified in the NSF/ANSI, or other certification, configuration,

ADEQ Response 3:

The new rule provision in R18-9-A311(A)(4) does not require septic tanks be installed with all alternative technologies. The key word in this new provision is "if." *If* any conventional technologies are used in combination with an alternative technology, then the general rule is that requirements in R18-9-E302 must be followed unless there are more alternative technology specific rules that require or allow deviations to the design requirements in R18-9-E302. Not all alternative technologies will require use of a disposal or treatment technology covered under R18-9-E302.

Regarding your concern about pretreatment septic tanks and chambers, you are correct, this modification does *presumptively* prescribe the design of septic tanks throughout the rules to R18-9-E302 (and therefore to R18-9-E314) design standards. Several rules indicate that a "septic tank" must or may be used in combination with the alternative technology. As examples, please see the design requirements for intermittent sand filters in R18-9-E310(D)(1), and for textile filters in R18-9-E312(A)(2). This rule provides the presumptive minimum design requirements for such septic tanks.

If a deviating design of a septic tank is more appropriate to be used in conjunction with the technology being used, an applicant may submit a request for approval of the alternate feature under R18-9-E312(G). Note, however, the new introductory rule language for R18-9-E312(G), as modified in this rulemaking, specifies that designs specifically incorporating alternative features already approved under the proprietary product listing process do not need additional alternative/deviation approvals. Therefore, <u>if the technology in question, including the deviating septic tank design, is already approved as a listed proprietary product</u>, an applicant may simply apply to use that approved technology and tank under the general permit without additional approvals under R18-9-E312(G), as long

as no other alternative features are needed.

Comment 4: Dave Lentz, Infiltrator Water Technologies, letter dated October 11, 2022 - Regarding editorial edit in R18-9-A309(12)

An editorial comment pertains to the text in R18-9-A309 (12), which states: "12. To obtain coverage under a Type 4 General Permit, and applicant must, in the following order:". In this line, "and applicant" should be changed to "an applicant".

ADEQ Response 4:

Thank you for your comment. This change has been made.

Comment 5: Dave Bartholomew, Water Services, Inc., email sent September 21, 2022 - Regarding modifications of enforcement rules referencing statutory authority (R18-9-A308 & -110)

ADEQ intends to repeal R18-9-A308, which would end the enforcement of on-site permit violations.

ADEQ Response 5:

As similarly stated in the well-received email sent to Dave Bartholomew, et al. on Wednesday September 21, 2022, ADEQ appreciates the concern and interest with regards to these rule changes. This rulemaking does not remove or end ADEQ enforcement authority. This rulemaking clarifies that the agency has more enforcement authority than R18-9-A308 implies. A.A.C. R18-9-A308 seems to limit ADEQ enforcement authority to a few limited statutory provisions, which is not consistent with the breadth of ADEQ's actual statutory authority. Therefore, ADEQ is eliminating this unnecessary and misleading rule. At the same time, ADEQ is amending R18-9-110 to remove reference to R18-9-A308. Going forward, ADEQ will rely on the remaining language in R18-9-110 to provide additional regulatory notice of ADEQ's enforcement authority because it refers to the same authority as statute provides. ADEQ notes, however, rules restating ADEQ's statutory enforcement authority are not necessary for the statutes to be effective and apply in full.

See also the explanation for this modification in Table 2, "Programmatic Implementation," of the Section-by-Section Explanation of Changes.

Comment 6: Jenny Vitale, from two emails sent September 22, 2022 - Regarding modifications of enforcement rules referencing statutory authority (R18-9-A308 & -110)

I do not recall this change being discussed with stakeholders...ever.....we build a better program when there is proper transparency…..It was never discussed, like a lot of changes ADEQ made to the Phase I.

ADEQ Response 6:

The enforcement provisions modifications in A.A.C. R18-9-A308 (repeal) and -110 (amend), including the preamble explanation, were sent to the On-site Wastewater Advisory Committee (OWAC), of which this commenter is a member, in multiple drafts. It was also discussed in several OWAC meetings in 2021 and 2022, and a stakeholder meeting held on October 7th. Hopefully the explanation in this preamble and the response to "Comment

5" helps clarify the intent behind the modifications.

Comment 7: Public commenter

I do not want wastewater used for drinking water.

ADEQ Response 7:

Thank you for your comment. This rule does not allow wastewater to be used for drinking water.

Comment 8: Lori Zito, APS, Spoken during the October 13th public hearing – Regarding applicability of rule changes to existing facilities

Would the changes be applied to existing facilities? How will the rules apply to existing facilities?

ADEQ Response 8:

Except as sensibly and reasonably applied for purposes of isolated repairs and replacements (e.g., thermoplastic septic tank standards), these rules will not apply to existing facilities. For the most part, these rules generally prescribe standards for construction and discharge authorization approvals. Design requirements for approval will not be automatically retroactively applied to existing facilities. However, as existing facilities are modified or replaced under new permits, the current rules will apply. Some rules may reasonably apply to parts replacements, such as the expansion of the use of thermoplastic tanks, if appropriate. Other changes, such as those regarding gray water use, are clarifications of existing rule and simply provide additional notice of requirements and Departmental interpretations of existing rules.

Comment 9: Lori Zito, APS, Spoken during the October 13th public hearing – Regarding applicability of rules in counties throughout the state

How jurisdiction between ADEQ and the counties will play out? Will this usurp the county programs? Or will ADEQ step back from it if the counties have their own program? How will that play out?

ADEQ Response 9:

ADEQ is working with delegated agencies to align their delegated actions with the requirements in this rule. Counties may adopt other standards or more stringent standards when authorized by law in accordance with specific requirements in A.R.S. § 49-112. Otherwise, however, delegated agencies have agreed to "perform the delegated functions, powers and duties according to the standards of performance required by law and prescribed by the director." A.R.S. § 49-107(A).

Comment 10: Jake Garrett, Gila County, Spoken during the October 13th public hearing – General comment

Thank you to you [Elias Toon] and Heidi [Welborn] and to everyone who participated in this very professional hearing, and I want to complement how you've conducted yourselves and the length you've gone to allow the public to make comments at this time.

ADEQ Response 10:

Thank you for your comments. We have greatly appreciated your involvement.

Comment 11: Dave Bartholomew, Water Services, Inc., Spoken during the October 13th public hearing – General comment

I echo Jake Garrett's sentiments. Thank you to DEQ for getting this process rolling. Hopefully between DEQ and OWAC we can keep working on streamlining these rules making these rules make sense and help them connect and just make a better program. Thank you for your herculean efforts so far and I look forward to the future of getting this up and running.

ADEQ Response 11:

Thank you for your comment. We have greatly appreciated your involvement. Also, pursuant to A.R.S. § 41-1039, the exemption memo allowing ADEQ to officially move forward with Phase 2 rule amendments was approved by the Office of the Governor on October 25, 2022. We look forward to continuing our work with stakeholders in advancing towards the common goal of protecting the environment and public health in a reasonable, efficient, and sustainable manner.

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:

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable. No new permits are being established. This is a general permit program. Therefore, there are no reasons to justify a non-general permit for this rulemaking.

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:

Not applicable.

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.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

"Standard Specification for Precast Concrete Septic Tanks, C1227-03C1227-20," published by the American Society for Testing and Materials.	R18-9-A314(2)(c)
"Prefabricated Septic Tanks – IAPMO/ANSI Z1000-2019," published	R18-9-A314(2)(d)

by the International Association of Plumbing and Mechanical Officials.

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

Section

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART A. GENERAL PROVISIONS

Section

PART E. TYPE 4 GENERAL PERMITS

Section

ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

R18-9-101. Definitions

In addition to the definitions established in A.R.S. § 49-201, the following terms apply to Articles 1, 2, 3, and 4 of this Chapter:

1. "Aggregate" means a clean graded hard rock, volcanic rock, or gravel of uniform size, between ¾ inch and 2 ½ inches in diameter, offering 30 percent or more void space, washed or prepared to be free of fine materials that will impair absorption surface performance, and has a hardness value of three or greater on the Moh's Scale of Hardness (can scratch a copper penny).
2. "Alert level" means a value or criterion established in an individual permit that serves as an early warning indicating a potential violation of a permit condition related to BADCT or the discharge of a pollutant to groundwater.
3. "AQL" means an aquifer quality limit and is a permit limitation set for aquifer water quality measured at the point of compliance that either represents an Aquifer Water Quality Standard or, if an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, represents the ambient water quality for that pollutant.
4. "Aquifer Protection Permit" means an individual permit or a general permit issued under A.R.S. §§ 49-203, 49-241 through 49-252, and Articles 1, 2, and 3 of this Chapter.
5. "Aquifer Water Quality Standard" means a standard established under A.R.S. §§ 49-221 and 49-223.
6. "AZPDES" means the Arizona Pollutant Discharge Elimination System, which is the state program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under A.R.S. Title 49, Chapter 2, Article 3.1 and 18 A.A.C. 9, Articles 9 and 10.
7. "BADCT" means the best available demonstrated control technology, process, operating method, or other alternative to achieve the greatest degree of discharge reduction determined for a facility by the Director under A.R.S. § 49-243.
8. "Bedroom" means, for the purpose of determining design flow for an on-site wastewater treatment facility for a dwelling, any room that has:
    a. A floor space of at least 70 square feet in area, excluding closets;
    b A ceiling height of at least 7 feet;
    c. Electrical service and ventilation;
    d. A closet or an area where a closet could be constructed;
    e. At least one window capable of being opened and used for emergency egress; and
    f. A method of entry and exit to the room that allows the room to be considered distinct from other rooms in the dwelling and to afford a level of privacy customarily expected for such a room.
9. "Book net worth" means the net difference between total assets and total liabilities.

~~10. "Chamber technology" means a method for dispersing treated wastewater into soil from an on-site wastewater treatment facility by one or more manufactured leaching chambers with an open bottom and louvered, load-bearing sidewalls that substitute for an aggregate-filled trench described in R18-9-E302.~~

~~11.~~10. "CCR" means coal combustion residuals which include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

~~12.~~11. "CCR landfill" means an area of land or an excavation that receives CCR and which is not a municipal solid waste landfill, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. A CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of beneficial use of CCR.

~~13.~~12. "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

~~14.~~13. "CCR unit" means any CCR landfill which receives CCR, any CCR surface impoundment designed to hold an accumulation of CCR and liquids, and the unit treats, stores or disposes of CCR. CCR unit includes a lateral expansion of a CCR unit, or a combination of more than one of these units that receives CCR.

14. "Cesspool" means a pit, collection structure, or subsurface fluid distribution system, which may or may not be partially lined, that receives discharged sewage. A cesspool is not an on-site wastewater treatment facility, such as a septic tank, vault, or other structure permitted under Article 3 of this Chapter.

15. "Chamber technology" means a method for dispersing treated wastewater into soil from an on-site wastewater treatment facility by one or more manufactured leaching chambers with an open bottom and louvered, load-bearing sidewalls that substitute for an aggregate-filled trench described in R18-9-E302.

~~15.~~16. "CMOM Plan" means a Capacity, Management, Operations, and Maintenance Plan, which is a written plan that describes the activities a permittee will engage in and actions a permittee will take to ensure that the capacity of the sewage collection system, when unobstructed, is sufficient to convey the peak wet weather flow through each reach of sewer, and provides for the management, operation, and maintenance of the permittee's sewage collection system.

~~16.~~17. "Design capacity" means the volume of a containment feature at a discharging facility that accommodates all permitted flows and meets all Aquifer Protection Permit conditions, including allowances for appropriate peaking and safety factors to ensure sustained, reliable operation.

~~17.~~18. "Design flow" means the daily flow rate a facility is designed to accommodate on a sustained basis while satisfying all Aquifer Protection Permit discharge limitations and treatment and operational requirements. The design flow either incorporates or is used with appropriate peaking and safety factors to ensure sustained, reliable operation.

~~18.~~19. "Direct reuse site" means an area where reclaimed water is applied or impounded.

~~19.~~20. "Disposal works" means the system for disposing treated wastewater generated by the treatment works of a sewage treatment facility or on-site wastewater treatment facility, by surface or subsurface methods. Disposal works do not include systems for activities regulated under 18 A.A.C. 9, Article 7.

~~20.~~21. *"Drywell" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.* A.R.S. § 49-331(3)

~~21.~~22. "Dwelling" means any building, structure, or improvement intended for residential use or related activity, including a house, an apartment unit, a condominium unit, a townhouse, or a mobile or manufactured home that has been constructed or will be constructed on real property.

~~22.~~23. "Final permit determination" means a written notification to the applicant of the Director's final decision whether to issue or deny an Individual Aquifer Protection Permit.

24. *"Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.* A.R.S. § 49-201(20).

~~23.~~25. "Groundwater Quality Protection Permit" means a permit issued by the Arizona Department of Health Services or the Department before September 27, 1989 that regulates the discharge of pollutants that may affect groundwater.

~~24.~~26. "Homeowner's association" means a nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.

~~25.~~27. "Injection well" means a well that receives a discharge through pressure injection or gravity flow.

~~26.~~28. "Intermediate stockpile" means in-process material not intended for long-term storage that is in transit from one process to another at a mining site. Intermediate stockpile does not include metallic ore concentrate stockpiles or feedstocks not originating at the mining site.

~~27.~~29. "Land treatment facility" means an operation designed to treat and improve the quality of waste, wastewater, or both, by placement wholly or in part on the land surface to perform part or all of the treatment. A land treatment facility includes a facility that performs biosolids drying, processing, or composting, but not land application performed in compliance with 18 A.A.C. 9, Article 10.

~~28.~~30. "Mining site" means a site assigned one or more of the following primary Standard Industrial Classification Codes: 10, 12, 14, 32, and 33, and includes noncontiguous properties owned or operated by the same person and connected by a right-of-way controlled by that person to which the public is not allowed access.

~~29.~~31. "Nitrogen Management Area" means an area designated by the Director for which the Director prescribes measures on an area-wide basis to control sources of nitrogen, including cumulative discharges from on-site

wastewater treatment facilities, that threaten to cause or have caused an exceedance of the Aquifer Water Quality Standard for nitrate.

~~30.~~32. "Notice of Disposal" means a document submitted to the Arizona Department of Health Services or the Department before September 27, 1989, giving notification of a pollutant discharge that may affect groundwater.

~~31.~~33. ~~"On-site wastewater treatment facility" means a conventional septic tank system or alternative system installed at a site to treat and dispose of wastewater, predominantly of human origin, generated at that site.~~ *"On-site wastewater treatment facility" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.* A.R.S. § 49-201(29). An on-site wastewater treatment facility does not include a pre-fabricated, manufactured treatment works that typically uses an activated sludge unit process and has a design flow of 3000 gallons per day or more.

~~32.~~34. "Operational life" means the designed or planned period during which a facility remains operational while being subject to permit conditions, including closure requirements. Operational life does not include post-closure activities.

~~33.~~35. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.* A.R.S. § ~~49-201(26)~~ 49-201(33). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association.

~~34.~~36. "Pilot project" means a short-term, limited-scale test designed to gain information regarding site conditions, project feasibility, or application of a new technology.

~~35.~~37. "Process solution" means a pregnant leach solution, barren solution, raffinate, or other solution uniquely associated with the mining or metals recovery process.

~~36.~~38. "Residential soil remediation level" means the applicable predetermined standard established in 18 A.A.C. 7, Article 2, Appendix A.

~~37.~~39. "Seasonal high water table" means the free surface representing the highest point of groundwater rise within an aquifer due to seasonal water table changes over the course of a year.

~~38.~~40. "Setback" means a minimum horizontal distance maintained between a feature of a discharging facility and a potential point of impact.

~~39.~~41. "Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, other plumbing fixtures, and waste pumped from septic tanks in places of human habitation, employment, or recreation. Sewage does not include gray water as defined in ~~R18-9-701(4)~~ A.R.S. § 49-201(20), if the gray water is reused according to 18 A.A.C. 9, Article 7.

~~40.~~42. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its

sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.

~~41.~~43. "Sewage treatment facility" means a plant or system for sewage treatment and disposal, except for an on-site wastewater treatment facility, that consists of treatment works, disposal works and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices. A sewage treatment facility does not include components of the sewage collection system or the reclaimed water distribution system.

~~42.~~44. "Surface impoundment" means a pit, pond, or lagoon with a surface dimension equal to or greater than its depth, and used for the storage, holding, settling, treatment, or discharge of liquid pollutants or pollutants containing free liquids.

~~43.~~45. "Tracer" means a substance, such as a dye or other chemical, used to change the characteristic of water or some other fluid to detect movement.

~~44.~~46. "Tracer study" means a test conducted using a tracer to measure the flow velocity, hydraulic conductivity, flow direction, hydrodynamic dispersion, partitioning coefficient, or other property of a hydrologic system.

~~45.~~47. "Treatment works" means a plant, device, unit process, or other works, regardless of ownership, used for treating, stabilizing, or holding municipal or domestic sewage in a sewage treatment facility or on-site wastewater treatment facility.

~~46.~~48. "Typical sewage" means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD_5) does not exceed 380 mg/l, the total nitrogen does not exceed 53 mg/l, and the content of oil and grease does not exceed 75 mg/l.

~~47.~~49. *"Underground storage facility" means a constructed underground storage facility or a managed underground storage facility.* A.R.S. § 45-802.01(21).

~~48.~~50. "Waters of the United States" means:

a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

b. All interstate waters, including interstate wetlands;

c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:

   i. That are or could be used by interstate or foreign travelers for recreational or other purposes;

   ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

   iii. That are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters defined as waters of the United States under this definition;

e. Tributaries of waters identified in subsections (a) through (d);

f. The territorial sea; and

g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (a) through (f).

R18-9-110. Inspections, Violations, and Enforcement

A. The Department shall conduct an inspection of a permitted facility as specified under A.R.S. § 41-1009.

B. ~~Except as provided in R18-9-A308, a~~ A person who owns or operates a facility contrary to a provision of Articles 1, 2, and 3 of this Chapter, violates a condition of an Aquifer Protection Permit, or violates a condition of a Groundwater Quality Protection Permit continued under R18-9-105(A)(1) is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4.

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART A. GENERAL PROVISIONS

R18-9-A303.Renewal of a Discharge Authorization

A. Unless a Discharge Authorization under a general permit is transferred, revoked, or expired, a person may discharge under the general permit for the authorization period as specified by the permit type, including any closure activities required by a specific general permit.

B. An authorization to discharge under a Type 1 or Type 4 General Permit is valid for the operational life of the facility.

C. A permittee authorized under a Type 2 or Type 3 General Permit shall submit an application for renewal on a form provided by the Department with the applicable fee established in 18 A.A.C. 14 at least 30 days before the end of the renewal period.

1. The following are the renewal periods for Type 2 and Type 3 General Permit Discharge Authorizations:
   a. 2.01 General Permit, five years;
   b. 2.02 General Permit, seven years;
   c. 2.03 General Permit, two years;
   d. 2.04 General Permit, five years;
   e. 2.05 General Permit, five years;
   f. 2.06 General Permit, five years; and
   g. Type 3 General Permits, five years.
2. The renewal period for coverage under a Type 2 General Permit begins on the date the Department receives the Notice of Intent to Discharge.
3. The renewal period for coverage under a Type 3 General Permit begins on the date the Director issues the written Discharge Authorization.

D. If the Discharge Authorization is not renewed within the renewal period specified in subsection ~~(B)(1)~~ (C)(1), the Discharge Authorization expires.

R18-9-A308.~~Violations and Enforcement For On-site Wastewater Treatment Facilities~~ Repealed

~~**A.** A person who owns or operates an on-site wastewater treatment facility contrary to the provisions of a Type 4 General Permit is subject to the enforcement actions under A.R.S. § 49-261;~~

~~**B.** A person who violates this Article or a specific term of a general permit for an on-site wastewater treatment facility is subject to enforcement actions under A.R.S. § 49-261.~~

R18-9-A309.General Provisions for On-site Wastewater Treatment Facilities

A. General requirements and prohibitions.

1. No person shall discharge sewage or wastewater that contains sewage from an on-site wastewater treatment facility except under an Aquifer Protection Permit issued by the Director.
2. A person shall not install, allow to be installed, or maintain a connection between any part of an on-site wastewater treatment facility and a drinking water system or supply so that sewage or wastewater contaminates the drinking water.
3. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from an on-site wastewater treatment facility.
4. A person shall not use a cesspool for sewage disposal.
5. A person constructing a new on-site wastewater treatment facility or replacing the treatment works or disposal works of an existing on-site wastewater treatment facility shall connect to a sewage collection system if <u>either (a) or (b) below apply</u>:
   a. One of the following applies:
      i. A provision of a Nitrogen Management Area designation under R18-9-A317(C) requires connection;
      ii. A county, municipal, or sanitary district ordinance requires connection; or
      iii. The on-site wastewater treatment facility is located within an area identified for connection to a sewage collection system by a Certified Area-wide Water Quality Management Plan adopted under 18 A.A.C. 5 or a master plan adopted by a majority of the elected officials of a board or council for a county, municipality, or sanitary district; or
   b. A sewer service line extension is available at the property boundary and both of the following apply:
      i. The service connection fee is not more than $6000 for a dwelling or $10 times the daily design flow in gallons for a source other than a dwelling, and
      ii. The cost of constructing the building sewer from the wastewater source to the service connection is not more than $3000 for a dwelling or $5 times the daily design flow in gallons for a source other than a dwelling.
6. The Department shall prohibit installation of an on-site wastewater treatment facility if the installation will create an unsanitary condition or environmental nuisance or cause or contribute to a violation of an Aquifer Water Quality Standard.
7. A person shall <u>design and</u> operate the permitted on-site wastewater treatment facility so that:
   a. Flows to the facility consist of typical sewage and do not include any motor oil, gasoline, paint, varnish, solvent, pesticide, fertilizer, or other material not generally associated with toilet flushing, food preparation, laundry, or personal hygiene;

b. Flows to the facility from commercial operations do not contain hazardous wastes as defined under A.R.S. § 49-921(5) or hazardous substances;

c. If the sewage contains a component of nonresidential flow such as food preparation, laundry service, or other source, the sewage is adequately pretreated by an interceptor that complies with R18-9-A315 or another device authorized by a general permit or approved by the Department under R18-9-A312(G);

d. Except as provided in subsection (A)(7)(c), a sewage flow that does not meet the numerical levels for typical sewage is adequately pretreated to meet the numerical levels before entry into an on-site wastewater treatment facility authorized by this Article;

e. Flow to the facility does not exceed the design flow specified in the Discharge Authorization;

f. The facility does not create an unsanitary condition or environmental nuisance, or cause or contribute to a violation of either a Aquifer Water Quality Standard or a Surface Water Quality Standard; and

g. Activities at the site do not adversely affect the operation of the facility.

8. A person shall control the discharge of total nitrogen from an on-site wastewater treatment facility as follows:

a. For an on-site wastewater treatment facility operating under the 1.09 General Permit or proposed for construction in a Notice of Intent to Discharge under a Type 4 General Permit and the facility is located within a Nitrogen Management Area, the provisions of R18-9-A317(D) apply;

b. For an on-site wastewater treatment facility proposed for construction in a Notice of Intent to Discharge under R18-9-E323, the provisions of R18-9-E323(A)(4) apply;

c. For a subdivision proposed under 18 A.A.C. 5, Article 4, for which on-site wastewater treatment facilities are used for sewage disposal, the permittee shall demonstrate in the geological report required in R18-5-408(E)(1) that total nitrogen loading from the on-site wastewater treatment facilities to groundwater is controlled by providing one of the following:

i. For a subdivision platted for a single family dwelling on each lot, calculations that demonstrate that the number of lots within the subdivision does not exceed the number of acres contained within the boundaries of the subdivision;

ii. For a subdivision platted for dwellings that do not meet the criteria specified in subsection (A)(8)(c)(i), calculations that demonstrate that the nitrogen loading over the total area of the subdivision is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the active treatment of the disposal fields, based on a total nitrogen contribution to raw sewage of 0.0333 pounds (15.0 grams) of total nitrogen per day per person; or

iii. An analysis by another means of demonstration showing that the nitrogen loading to the aquifer due to on-site wastewater treatment facilities within the subdivision does not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate at the applicable point of compliance.

9. Repairs and Routine Work.

a. A Notice of Intent to Discharge is not required for repair or routine work that maintains a facility.

b. ~~The following work is not considered routine work and a~~ A Notice of Intent to Discharge is required for the following non-routine work or repairs:

i. Converting a facility from operation ~~only~~ under gravity to one requiring a pump or other ~~powered equipment~~ mechanical device for treatment or disposal;

~~ii. Modifying or replacing a facility operating under the 1.09 General Permit with a different type of treatment or disposal technology;~~

~~iii. Changing the treatment works or disposal works of a facility authorized under one or more Type 4 General Permits to a technology covered by any other Type 4 General Permit;~~

~~iv. Extending the disposal works more than 10 feet beyond the footprint of the original disposal works;~~

~~iv. Reconstructing any part of the disposal works in soil that is inadequate for the treated wastewater flow or strength;~~

~~v. Expanding the footprint of the facility into or within setback buffers established in R18-9-A312(C);~~

~~vi. Reconstructing the disposal works so that it does not meet the vertical separation requirements specified in R18-9-A312(E);~~

~~vii. Modifying a treatment works or disposal works to accommodate a daily design flow or waste load greater than the daily design flow or waste load applicable to the original facility; or~~

~~viii. Replacing the treatment works.~~

ii. Modifying or replacing a treatment works or disposal works, as defined in R18-9-101; or

iii. Modifying a facility in any manner that is inconsistent with the originally approved design and installation of the facility.

~~c. Components used in a repair shall meet the design, installation, and operational requirements of this Article.~~

~~d.~~c. A permittee shall comply with any local ordinance that provides independent permitting requirements for repair or routine work.

~~e.~~d. A person, as defined in R18-9-101, shall not modify the facility so as to create an unsanitary condition or environmental nuisance or cause or contribute to an exceedance of a water quality standard.

10. Cumulative flows. When there is more than one on-site wastewater treatment facility on a property or on a site under common ownership or subject to a larger plan of sale or development, the Director shall determine whether an individual permit is required or whether the applicant qualifies for coverage to discharge under a general permit based on the sum of the design flows from the proposed installation and existing on-site wastewater treatment facilities on the property or site.

a. If the sum of the design flows is less than 3000 gallons per day, the Department will process the application under R18-9-E302 through R18-9-E322, as applicable.

b. If the sum of the design flows is equal to or more than 3000 gallons per day but less than 24,000 gallons per day, the Department will process the application under R18-9-E323.

c. If the sum of the design flows is equal to or more than 24,000 gallons per day, the project does not qualify for coverage under a Type 4 General Permit and the applicant shall submit an application for an individual permit under Article 2 of this Chapter.

11. The use of a gray water system does not change the design, capacity, or reserve area requirements for an on-site wastewater treatment facility regulated under R18-9-E302 through R18-9-E323. The design of an on-site facility shall ensure the on-site facility can treat and dispose of the combined black water and gray water flows generated at the site. Black water includes wastewater flows from a kitchen sink. Kitchen sink wastewater flows are not gray water. Kitchen sink wastewater flows are not gray water even if a holding tank receiving kitchen sink wastewater, such as a recreational vehicle holding tank, is labeled as holding gray water. Gray water, as defined in R18-9-101, may be utilized in accordance with Article 7 of this Chapter.
12. To obtain coverage under a Type 4 General Permit, an applicant must, in the following order:
    a. Submit a Notice of Intent to Discharge according to requirements in R18-9-A301(B), R18-9-A309(B), and according to permit-specific requirements in Part E of Article 3,
    b. Receive a Construction Authorization from the Director pursuant to R18-9-A301(D)(1)),
    c. Submit a Request for Discharge Authorization according to requirements in R18-9-A301(D)(1)(f), R18-9-A309(C), and according to permit-specific requirements in Part E of Article 3, and
    d. Receive a Discharge Authorization from the Director pursuant to R18-9-A301(D)(2) and R18-9-A309(C).

B. Notice of Intent to Discharge under a Type 4 General Permit. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information in a format approved by the Department:

1. A site investigation report that summarizes the results of the site investigation conducted under R18-9-A310(B), including:
    a. Results from any soil evaluation, percolation test, or seepage pit performance test;
    b. Any surface limiting condition identified in R18-9-A310(C)(2); and
    c. Any subsurface limiting condition identified in R18-9-A310(D)(2);
2. A site plan that includes:
    a. The parcel and lot number, if applicable, the property address or other appropriate legal description, the property size in acres, and the boundaries of the property;
    b. A plan of the site drawn to scale, dimensioned, and with a north arrow that shows:
        i. Proposed and existing on-site wastewater treatment facilities; dwellings and other buildings; driveways, swimming pools, tennis courts, wells, ponds, and any other paved, concrete, or water feature; down slopes and cut banks with a slope greater than 15 percent; retaining walls; and any other constructed feature that affects proper location, design, construction, or operation of the facility;

ii. Any feature less than 200 feet from the on-site wastewater treatment facility excavation and reserve area that constrains the location of the on-site wastewater treatment facility because of setback limitations specified in R18-9-A312(C);

iii. Topography, delineated with an appropriate contour interval, showing original and post-installation grades;

iv. Drainage patterns, and as applicable, drainage controls and erosion protection for the facility;

~~iv.~~v. Location and identification of the treatment and disposal works and wastewater pipelines, the reserve disposal area, and location and identification of all sites of percolation testing and soil evaluation performed under R18-9-A310; and

~~v.~~vi. Location of any public sewer if 400 feet or less from the property line;

3. The design flow of the on-site wastewater treatment facility, consisting of gray water and black water flows, expressed in gallons per day based on Table 1, Unit Design Flows, the expected strength of the wastewater if the strength exceeds the levels for typical sewage, and:
   a. For a single family dwelling, a list of the number of bedrooms and plumbing fixtures and corresponding unit flows used to calculate the design flow of the facility; and
   b. For a dwelling other than for a single family, a list of each wastewater source and corresponding unit flows used to calculate the design flow of the facility;
4. A list of materials, components, and equipment for constructing the on-site wastewater treatment facility;
5. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department; ~~and~~
6. If pretreatment is necessary for a facility to comply with the requirements of this Chapter, including R18-9-A309(A)(7), then a design report approved by the on-site wastewater treatment facility manufacturer or manufacturers that specifies component capacities, control settings, and supplemental installation and operation practices necessary to produce typical sewage numerical levels before entry into an on-site wastewater treatment facility; and

~~6.~~7. For a facility that includes treatment or disposal works permitted under R18-9-E303 through R18-9-E323:
   a. Construction quality drawings that show the following:
      i. Systems, subsystems, and key components, including manufacturer's name, model number, and associated construction notes and inspection milestones, as applicable;
      ii. A title block, including facility owner, revision date, space for addition of the Department's application number, and page numbers;
      iii. A plan and profile with the elevations of wastewater pipelines, and treatment and disposal components, including calculations justifying the absorption area, to allow Department verification of hydraulic and performance characteristics;
      iv. Cross sections showing wastewater pipelines, construction details and elevations of treatment and disposal components, original and finished grades of the land surface, seasonal high water table if less than 10 feet below the bottom of a disposal works or 60 feet below the bottom of a seepage pit,

and a soil elevation evaluation to allow Department verification of installation design and performance; and

~~v. Drainage pattern, drainage controls, and erosion protection, as applicable, for the facility; and~~

b. A draft operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;

C. Additional requirements for a Request for Discharge Authorization and for the issuance of a Discharge Authorization under a Type 4 General Permit.

1. If the entire on-site wastewater treatment facility, including treatment works and disposal works, will be permitted under R18-9-E302, the Director shall issue the Discharge Authorization if, as a part of the Request for Discharge Authorization:
   a. The site plan accurately reflects the final location and configuration of the components of the treatment and disposal works, and
   b. The applicant or the applicant's agent certifies on the Request for Discharge Authorization form that the septic tank passed the watertightness test required by R18-9-A314(5)(d).
2. If the on-site wastewater treatment facility is proposed under R18-9-E303 through R18-9-E323, either separately or in any combination with each other or with R18-9-E302, the Director shall issue the Discharge Authorization if the following documents are submitted to the Department as part of the Request for Discharge Authorization:
   a. As-built plans showing changes from construction quality drawings submitted under subsection (B)(6)(a);
   b. A final list of equipment and materials showing changes from the list submitted under subsection (B)(4);
   c. A final operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;
   d. A certification that a service contract for ensuring that the facility is operated and maintained to meet the performance and other requirements of the applicable general permits exists for at least one year following the beginning of the operation of the on-site wastewater treatment facility, including the name of the service provider, if the on-site wastewater treatment facility is permitted under:
      i. R18-9-E304;
      ii. R18-9-E308 through R18-9-E315;
      iii. R18-9-E316, if the facility includes a pump; or
      iv. R18-9-E318 through R18-9-E322;
   e. Other documents, if required by the separate general permits in 18 A.A.C. 9, Article 3, Part E;
   f. A Certificate of Completion signed by the current engineer or designer of record ~~person responsible for~~ assuring that installation of the facility conforms to the design approved under the Construction Authorization under R18-9-A301(D)(1)(c); and a regulatory representative, such as an inspector, may not act as an applicant's agent, nor authorize backfill before the current engineer or designer of record has verified proper installation of the system;

g. The name of the installation contractor and the Registrar of Contractor's license number issued to the installation contractor; and

h. A certification that any septic tank installed as a component of the on-site wastewater treatment facility passed the watertightness test required by R18-9-A314(5)(d).

3. The Director shall specify in the Discharge Authorization:

a. The permitted design flow of the facility,

b. The characteristics of the wastewater sources contributing to the facility, and

c. A list of the documents submitted to and reviewed by the Department satisfying subsection (C)(2).

D. Closure requirements. A person who permanently discontinues use of an on-site wastewater treatment facility or a cesspool, or is ordered by the Director to close an abandoned facility shall:

1. Remove all sewage from the facility and dispose of the sewage in a lawful manner;
2. Disconnect and remove electrical and mechanical components;
3. Remove or collapse the top of any tank or containment structure.

a. Punch a hole in the bottom of the tank or containment structure if the bottom is below the seasonal high groundwater table;

b. Fill the tank or containment structure or any cavity resulting from its removal with earth, sand, gravel, concrete, or other approved material; and

c. Regrade the surface to provide drainage away from the closed area;

4. Cut and plug both ends of the abandoned sewer drain pipe between the building and the on-site wastewater treatment facility not more than 5 feet outside the building foundation if practical, or cut and plug as close to each end as possible; and
5. Notify the Department within 30 days of closure.

E. Proprietary and other reviewed products.

1. The Department shall maintain a list of proprietary and other reviewed products that may be used for on-site wastewater treatment facilities to comply with the requirements of this Article. The list shall include appropriate information on the applicability and limitations of each product.
2. The list of proprietary and other reviewed products may include manufactured systems, subsystems, or components within the treatment works and disposal works if the products significantly contribute to the treatment performance of the system or provide the means to overcome site limitations. The Department will not list septic tanks, effluent filters or components that do not significantly affect treatment performance or provide the means to overcome site limitations.
3. A person may request that the Department add a product to the list of proprietary and other reviewed products. The request may include a proposed reference design for review. The Department shall ensure that performance values in the list reflect the treatment performance for defined wastewater characteristics. The Department shall assess fees under 18 A.A.C. 14 for product review.

F. Recordkeeping. A permittee authorized to discharge under one or more Type 4 General Permits shall maintain the Discharge Authorization and associated documents for the life of the facility.

R18-9-A310.Site Investigation for Type 4 On-site Wastewater Treatment Facilities

A. Definition. For purposes of this Section, "clean water" means water free of colloidal material or additives that could affect chemical or physical properties if the water is used for percolation or seepage pit performance testing.

B. Site investigation. An applicant shall ensure that an investigator qualified under subsection (H) conducts a site investigation consisting of a surface characterization under subsection (C) and a subsurface characterization under subsection (D). The applicant shall submit the results in a format prescribed by the Department. The site investigation shall provide sufficient data to:

1. Select appropriate primary and reserve disposal areas for an on-site wastewater treatment facility considering all surface and subsurface limiting conditions in subsections (C)(2) and (D)(2); and;
2. Effectively design and install the selected facility to serve the anticipated development at the site, whether or not limiting conditions exist.

C. Surface characterization.

1. Surface characterization method. The investigator shall characterize the surface of the site where an on-site wastewater treatment facility is proposed for installation using one of the following methods:
   a. The "Standard Practice for Surface Site Characterization for On-site Septic Systems, D5879-95 (2003)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   b. Another method of surface characterization that can, with accuracy and reliability, identify and delineate the surface limiting conditions specified in subsection (C)(2).
2. Surface limiting conditions. The investigator shall determine whether, and if so, where any of the following surface limiting conditions exist:
   a. The surface slope is greater than 15 percent at the intended location of the on-site wastewater treatment facility;
   b. Minimum setback distances are not within the limits specified in R18-9-A312(C);
   c. Surface drainage characteristics at the intended location of the on-site wastewater treatment facility will adversely affect the ability of the facility to function properly;
   d. A 100-year flood hazard zone, as indicated on the applicable flood insurance rate map, is located within the property on which the on-site wastewater treatment facility will be installed, and the flood hazard zone may adversely affect the ability of the facility to function properly;
   e. An outcropping of rock that cannot be excavated exists in the intended location of the on-site wastewater treatment facility or will impair the function of soil receiving the discharge; and
   f. Fill material deposits exist in the intended location of the on-site wastewater treatment facility.

D. Subsurface characterization.

1. Subsurface characterization method. The investigator shall characterize the subsurface of the site where an on-site wastewater treatment facility is proposed for installation using one or more of the following methods:
   a. The following ASTM standard ~~practices~~ practice, which ~~are~~ is incorporated by reference and ~~do~~ does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959:
      ~~i.~~ "Standard Practice for Subsurface Site Characterization of Test Pits for On-site Septic Systems, D5921-96(2003)e1 (2003)," published by the American Society for Testing and Materials; ~~and~~
      ~~ii. "Standard Practice for Soil Investigation and Sampling by Auger Borings, D1452-80 (2000)," published by the American Society for Testing and Materials;~~
   b. Percolation testing as specified in subsection (F);
   c. Seepage pit performance testing as specified in subsection (G); or
   d. Another method of subsurface characterization, approved by the Department, that ensures compliance with water quality standards through proper system location, selection, design, installation, and operation.
2. Subsurface limiting conditions. The investigator shall determine whether any of the following limiting conditions exist in the primary and reserve areas of the on-site wastewater treatment facility within a minimum of 12 feet of the land surface or to an impervious soil or rock layer if encountered at a shallower depth:
   a. The soil absorption rate determined under R18-9-A312(D)(2) is:
      i. More than 1.20 gallons per day per square foot, or
      ii. Less than 0.20 gallons per day per square foot;
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation specified in R18-9-A312(E)(1);
   c. Seasonal saturation occurs within surface soils that could affect the performance of the on-site wastewater treatment facility;
   d. One of the following subsurface conditions that may cause or contribute to the surfacing of wastewater:
      i. An impervious soil or rock layer,
      ii. A zone of saturation that substantially limits downward percolation from the disposal works,
      iii. Soil with more than 50 percent rock fragments;
   e. One of the following subsurface conditions that promotes accelerated downward movement of insufficiently treated wastewater:
      i. Fractures or joints in rock that are open, continuous, or interconnected;
      ii. Karst voids or channels; or
      iii. Highly permeable materials such as deposits of cobbles or boulders; or

f. A subsurface condition that may convey wastewater to a water of the state and cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4.

3. Applicability of subsurface characterization methods. The investigator shall:
   a. For a seepage pit constructed under R18-9-E302, test seepage pit performance using the procedure specified in subsection (G);
   b. For an on-site wastewater treatment facility other than a seepage pit, characterize soil by using ~~one or more of~~ the ASTM ~~methods~~ method specified in subsection (D)(1)(a) if any of the following site conditions exists:
      i. The natural surface slope at the intended location of the on-site wastewater treatment facility is greater than 15 percent;
      ii. Bedrock or similar consolidated rock formation that cannot be excavated with a shovel outcrops on the property or occurs less than 12 feet below the land surface;
      iii. The native soil at the surface or encountered in a boring, trench, or hole consists of more than 35 percent rock fragments;
      iv. The seasonal high water table occurs within 12 feet of the natural land surface as encountered in trenches or borings, or evidenced by well records or hydrologic reports;
      v. Seasonal saturation at the natural land surface occurs as indicated by soil mottling, vegetation adapted to near-surface saturated soils, or springs, seeps, or surface water near enough to the intended location of the on-site wastewater treatment facility to have a connection with potential seasonal saturation at the land surface; or
      vi. A percolation test yields results outside the limits specified in subsection (D)(2)(a) and (b).
   c. Percolation testing. The investigator may perform percolation testing as specified in subsection (F):
      i. To augment another method of subsurface characterization if useful to locate or design an on-site wastewater treatment facility, or
      ii. As the sole method of subsurface characterization if a subsurface characterization by an ASTM method is not required under subsection (D)(3)(b).

E. If an ASTM method is used for subsurface characterization, the investigator shall conduct subsurface characterization tests at the site to provide adequate, credible, and representative information to ensure proper location, selection, design, and installation of the on-site wastewater treatment facility. The investigator shall:

1. Select at least two test locations in the primary area and one test location in the reserve area to conduct the tests;
2. Perform the characterization at each test location at appropriate depths to:
   a. Establish the wastewater absorption capacity of the soil under R18-9-A312(D), and
   b. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment; and
3. Submit with the site investigation report:

a. A log of soil formations for each test location with information on soil type, texture, and classification; percentage of rock; structure; consistence; and mottles;
b. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
c. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(b), sufficient to allow location and design of the on-site wastewater treatment facility.

F. Percolation testing method for subsurface characterization.

1. Planning and preparation. The investigator shall:
   a. Select at least two locations in the primary area and at least one location in the reserve area for percolation testing, to provide adequate and credible information to ensure proper location, selection, design, and installation of a properly working on-site wastewater treatment facility;
   b. Perform percolation testing at each location at intervals in the soil profile sufficient to:
      i. Establish the wastewater absorption capability of the soil under R18-9-A312(D), and
      ii. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment. The investigator shall perform percolation tests at multiple depths if there is an indication of an obvious change in soil characteristics that affect the location, selection, design, installation, or disposal performance of the on-site wastewater treatment facility;
   c. Excavate percolation test holes in undisturbed soil at least 12 inches deep with dimensions of 12 inches by 12 inches, if square, or a diameter of 15 inches, if round. The investigator shall not alter the structure of the soil during the excavation;
   d. Place percolation test holes away from site or soil features that yield unrepresentative or misleading data pertaining to the location, selection, design, installation, or performance of the on-site wastewater treatment facility;
   e. Scarify smeared soil surfaces within the percolation test holes and remove any loosened materials from the bottom of the hole; and
   f. Use buckets with holes in the sides to support the sidewalls of the percolation test hole, if necessary. The investigator shall fill any voids between the walls of the hole and the bucket with pea gravel to reduce the impact of the enlarged hole.
2. Presoaking procedure. The investigator shall:
   a. Fill the percolation test hole with clean water to a depth of 12 inches above the bottom of the hole;
   b. Observe the decline of the water level in the hole and record time in minutes for the water to completely drain away;
   c. Repeat the steps specified in subsection (F)(2)(a) and (b) if the water drains away in less than 60 minutes.
      i. If the water drains away the second time in less than 60 minutes, the investigator shall repeat the steps specified in subsections (F)(2)(a) and (b).

ii. If the water drains away a third time in less than 60 minutes, the investigator shall perform the percolation test by following subsection (F)(3); and

d. Add clean water to the hole after 60 minutes and maintain the water at a minimum depth of 9 inches for at least four more hours if it takes 60 minutes or longer for the water to drain away. The investigator shall protect the hole from precipitation and runoff, and perform the percolation test specified in subsection (F)(3) between 16 and 24 hours after presoaking.

3. Conducting the test. The investigator shall:

a. Conduct the percolation test before soil hydraulic conditions established by the presoaking procedure substantially change. The investigator shall remove loose materials in the percolation test hole to ensure that the specified dimensions of the hole are maintained and the infiltration surfaces are undisturbed native soil;

b. Fill the test hole to a depth of six inches above the bottom with clean water;

c. Observe the decline of the water level in the test hole and record the time in minutes for the water level to fall exactly 1 inch from a fixed reference point. The investigator shall:

i. Immediately refill the hole with clean water to a depth of 6 inches above the bottom, and determine and record the time in minutes for the water level to fall exactly 1 inch,

ii. Refill the hole again with clean water to a depth of 6 inches above the bottom and determine and record the time in minutes for the water to fall exactly 1 inch, and

iii. Ensure that the method for measuring water level depth is accurate and does not significantly affect the percolation rate of the test hole;

d. If the percolation rate stabilizes for three consecutive measurements by varying no more than 10 percent, use the highest percolation rate value of the three measurements. If three consecutive measurements indicate that the percolation rate results are not stabilizing or the percolation rate is between 60 and 120 minutes per inch, the investigator shall use an alternate method based on a graphical solution of the test data to approximate the stabilized percolation rate;

e. Record the percolation rate results in minutes per inch; and

f. Submit the following information with the site investigation report:

i. A log of the soil formations encountered for all percolation tests including information on texture, structure, consistence, percentage of rock fragments, and mottles, if present;

ii. Whether and which test hole was reinforced with a bucket;

iii. The locations, depths, and bottom elevations of the percolation test holes on the site investigation map;

iv. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and

v. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(a), sufficient to allow location and design of the on-site wastewater treatment facility.

G. Seepage pit performance testing method for subsurface characterization. The investigator shall test seepage pits described in R18-9-E302 as follows:

1. Planning and Preparation. The investigator shall:
    a. Identify the disposal areas at the site and drill a test hole at least 18 inches in diameter to the depth of the proposed seepage pit, at least 30 feet deep, and
    b. Scarify soil surfaces within the test hole and remove loosened materials from the bottom of the hole.
2. Presoaking procedure. The investigator shall:
    a. Fill the bottom 6 inches of the test hole with gravel, if necessary, to prevent scouring;
    b. Fill the test hole with clean water up to 3 feet below the land surface;
    c. Observe the decline of the water level in the hole and determine the time in hours and minutes for the water to completely drain away;
    d. Repeat the procedure if the water drains away in less than four hours; If the water drains away the second time in less than four hours, the investigator shall conduct the seepage pit performance test by following subsection (G)(3);
    e. Add water to the hole and maintain the water at a depth that leaves at least the top 3 feet of hole exposed to air for at least four more hours if the water drains away in four or more hours; and
    f. Not remove the water from the hole before the seepage pit performance test if there is standing water in the hole after at least 16 hours of presoaking.
3. Conducting the test. The investigator shall:
    a. Fill the test hole with clean water up to 3 feet below land surface;
    b. Observe the decline of the water level in the hole and determine and record the vertical distance to the water level from a fixed reference point every 10 minutes. The investigator shall ensure that the method for measuring water level depth is accurate and does not significantly affect the rate of fall of the water level in the test hole;
    c. Measure the decline of the water level continually until three consecutive 10-minute measurements indicate that the infiltration rates are within 10 percent. If measurements indicate that infiltration is not approaching a steady rate or if the rate is close to a numerical limit specified in R18-9-A312(E)(1), the investigator shall use, an alternate method based on a graphical solution of the test data to approximate the final stabilized infiltration rate;
    d. Percolation test rate. Calculate the stabilized infiltration rate for a seepage pit determined by the test hole procedure specified in subsection (G)(1)(a) using the formula P = (15 / DS) x IS to determine an equivalent percolation test rate. Once "P" is determined, the investigator shall use R18-9-A312(D)(2)(a) to establish the design SAR for wastewater treated under R18-9-E302 and to calculate the required minimum sidewall area for the seepage pit using the equation specified in R18-9-E302(C)(5)(k).
        i. "P" is the percolation test rate (minutes per inch) tabulated in the first column of the table in R18-9-A312(D)(2)(a),
        ii. "DS" is the diameter of the seepage pit test hole in inches, and

iii. "IS" is the seepage pit stabilized infiltration rate (minutes per inch) determined by the procedure specified in ~~R18-9-A310(F)(3)(c)~~ R18-9-A310(G)(3)(c);

e. Submit the following information with the site investigation report:

i. The results of the seepage pit performance testing including data, calculations, and findings on a form provided by the Department;

ii. The log of the test hole indicating lithologic characteristics and points of change;

iii. The location of the test hole on the site investigation map;

iv. A determination of depth to groundwater below the land surface by borings, published groundwater data, subdivision reports, or relevant well data.

f. Fill the test hole so that groundwater quality and public safety are not compromised if the seepage pit is drilled elsewhere or if a seepage pit cannot be sited at the location because of unfavorable test results.

H. Qualifications. An investigator shall not perform a site investigation under this Section unless the investigator has knowledge and competence in the subject area and is licensed in good standing or otherwise qualified in one of the following categories:

1. Arizona-registered professional engineer,
2. Arizona-registered geologist,
3. Arizona-registered sanitarian,
4. A certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section, or
5. Qualifies under another category designated in writing by the Department.

R18-9-A311.Facility Selection for Type 4 On-site Wastewater Treatment Facilities

A. A person shall select, design, and install an on-site wastewater treatment facility that is appropriate for the site's geographic location, setback limitations, slope, topography, drainage and soil characteristics, wastewater infiltration capability, depth to the seasonal high water table, and any surface or subsurface limiting condition.

1. A person may use on-site treatment and disposal technologies covered by a Type 4 General Permit alone or in combination with another Type 4 General Permit to overcome site limitations.
2. An applicant may submit a single Notice of Intent to Discharge for an on-site wastewater treatment facility consisting of components or technologies covered by multiple general permits if the information submittal requirements of all the general permits are met.
3. The Director shall issue a single Construction Authorization under R18-9-A301(D)(1) and a single Discharge Authorization under R18-9-A301(D)(2) for an on-site wastewater treatment facility that consists of components or technologies covered by multiple general permits.
4. If either a septic tank or disposal method, or both, as identified in R18-9-E302, is appropriately used in combination with an alternative technology listed under R18-9-E303 through R18-9-E322, the applicant shall apply the design requirements specified in R18-9-E302, except that the specific requirements for R18-9-E303 through R18-9-E323, as applicable, supersede requirements in R18-9-E302 if the rules conflict. If additional

modifications are necessary and appropriate to ensure adequate treatment, the applicant may request review under R18-9-A312(G) to allow the Department to approve the application.

B. A person may install a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a site if the site investigation conducted under R18-9-A310 indicates that no limiting condition identified under R18-9-A310(C) or R18-9-A310(D) exists at the site.

1. A person may install a seepage pit only in valley-fill sediments in a basin-and-range alluvial basin and only if the seepage pit performance test results meet the criteria specified in R18-9-A312(E).
2. The person shall specify in the Notice of Intent to Discharge that no limiting conditions described in R18-9-A310(C) and (D) were identified at the site.

C. If any surface or subsurface limiting condition is identified in the site investigation report, an applicant may propose installation of a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a facility only if:

1. The applicant submits information under R18-9-A312(G) that describes:
   a. How the design of the septic tank and disposal works system specified in R18-9-E302 was modified to overcome limiting conditions;
   b. How the modified design meets the criteria of R18-9 -A312(G)(3); and
   c. A site-specific SAR under R18-9-A312(D)(2)(a) or (b), as applicable; and
2. None of the following surface or subsurface limiting conditions are identified at the site:
   a. An outcropping of rock that cannot be excavated or will impair the function of soil receiving the discharge exists in the intended location of the on-site wastewater treatment facility, as described in R18-9-A310(C)(2)(e);
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation distance, as described in ~~R18-9-A310(D)(2)(c)~~ R18-9-A310(D)(2)(b); or
   c. A subsurface condition that promotes accelerated downward movement of insufficiently treated wastewater as described in R18-9-A310(D)(2)(e).

D. If a site can accommodate a septic tank and disposal works system described in R18-9-E302, the applicant shall not install a treatment works or disposal works described in R18-9-E303 through R18-9-E322 unless the applicant submits a statement to the Department with the Notice of Intent to Discharge acknowledging the following:

1. The applicant is aware that although a septic tank and disposal works system described in R18-9-E302 is appropriate for the site, the applicant desires to install a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322; and
2. The applicant is aware that a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322 may result in higher capital, operation, and maintenance costs than a septic tank and disposal works system described in R18-9-E302.

R18-9-A312.Facility Design for Type 4 On-site Wastewater Treatment Facilities

A. General design requirements. An applicant shall ensure that the person designing an on-site wastewater treatment facility:

1. Signs the design documents submitted as part of the Notice of Intent to Discharge to obtain a Construction Authorization, including plans, specifications, drawings, reports, and calculations; and
2. Locates and designs the on-site wastewater treatment facility project using good design judgment and relies on appropriate design methods and calculations.

B. Design considerations and flow determination. An applicant shall ensure that the person designing the on-site wastewater treatment facility shall:

1. Design the facility to satisfy a 20-year operational life;
2. Design the facility based on the provisions of one or more of the general permits in R18-9-E302 through R18-9-E322 for facilities with a design flow of less than 3000 gallons per day, and R18-9-E323 for facilities with a design flow of 3000 gallons per day to less than 24,000 gallons per day;
3. Design the facility based on the facility's design flow and wastewater characteristics as specified in R18-9-A309(A)(7), (10) and (11) and R18-9-A309(B)(3);
4. For on-site wastewater treatment facilities permitted under R18-9-E303 through R18-9-E323, apply the following design requirements, as applicable:
    a. Include the power source and power components in construction drawings if electricity or another type of power is necessary for facility operation;
    b. If a hydraulic analysis is required under subsection (E), perform the analysis based on the location and dimensions of the bottom and sidewall surfaces of the disposal works that are identified in the design documentation;
    c. Design components, piping, ports, seals, and appurtenances to withstand installation loads, internal and external operational loads, and buoyant forces. Design ports for resistance against movement, and cap or cover openings for protection from damage and entry by rodents, mosquitoes, flies, or other organisms capable of transporting a disease-causing organism;
    d. Design tanks, liners, ports, seals, piping to and within the facility, and appurtenances for watertightness under all operational conditions;
    e. Provide adequate storage capacity above high operating level to:
        i. Accommodate a 24-hour power or pump outage, and
        ii. Contain wastewater that is incompletely treated or cannot be released by the disposal works to the native soil;
    f. If a fixed media process is used, provide in the construction drawings the media material, installation specification, media configuration, and wastewater loading rate of the media at the daily design flow;
    g. Provide a fail-safe wastewater control or operational process, if required by the general permit to prevent discharge of inadequately treated wastewater; and
    h. Reference design. If using a reference design on file with the Department, indicate the reference design within the information submitted with the Notice of Intent to Discharge.

C. Setbacks. The following setbacks apply unless the Department:

1. Specifies alternative setbacks under Article 3, Part E of this Chapter;
2. Approves a different setback under the procedure specified in subsection (G); or
3. Establishes a more stringent setback on a site- or area-specific basis to ensure compliance with water quality standards.

Features Requiring Setbacks	**Setback For An On-Site Wastewater Treatment Facility, Including Reserve Area (In Feet)**	**Special Provisions**
1. Building	10	Includes porches, decks (including pool decks), and steps (covered or uncovered), breezeways, roofed patios, carports, covered walks, and similar structures and appurtenances.
2. Property line shared with any adjoining lot or parcel not served by a common drinking water system* or an existing water well	50	A person may reduce the setback to a minimum of 5 feet from the property line if: a. The owners of any affected undeveloped adjacent properties agree, as evidenced by an appropriately recorded document, to limit the location of any new well on their property to at least 100 feet from the proposed treatment works and primary and reserve disposal works; and b. The arrangements and documentation are approved by the Department.
3. All other property lines	5	None
4. Public or private water supply well	100	None
5. Perennial or intermittent stream	100	Measured horizontally from the high water line of the peak streamflow from a 10-year, 24-hour rainfall event.

6. Lake, reservoir, or canal	100	Measured horizontally from the high water line from a 10-year, 24-hour rainfall event at the lake or reservoir and measured horizontally from the edge of the canal.
7. Drinking water intake from a surface water source (includes an open water body, downslope spring or a well tapping streamside saturated alluvium)	200	Measured horizontally from the on-site wastewater treatment facility to the structure or mechanism for withdrawing raw water such as a pipe inlet, grate, pump, intake or diversion box, spring box, well, or similar structure.
8. Wash or drainage easement with a drainage area of more than 20 acres	50	Measured horizontally from the nearest edge of the defined natural channel bank or drainage easement boundary. A person may reduce the setback to 25 feet if natural or constructed erosion protection is approved by the appropriate flood plain administrator.
9. Water main or branch water line	10	None
10. Domestic service water line (including domestic water holding tanks)	5	Measured horizontally between the water line and the wastewater pipe, except that the following are allowed: a. A water line may cross above a wastewater pipe if the crossing angle is between 45 and 90 degrees and the vertical separation distance is 1 foot or more. b. A water line may parallel a wastewater pipe with a horizontal separation distance of 1 foot to 5 feet if the bottom of the water line is 1 foot or more above the top of the wastewater pipe and is in a separate trench or on a bench in the same trench.

11. Downslopes or cut banks greater than 15 percent, culverts, and ditches from:		
a. Treatment works components	10	Measured horizontally from the bottom of the treatment works component to the closest point of daylighting on the surface.
b. Trench, bed, chamber technology, or gravelless trench with:		Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
i. No limiting subsurface condition specified in R18-9-A310(D)(2),	20	
ii. A limiting subsurface condition.	50	
c. Subsurface drip lines.	3	Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
12. Driveway	5	Measured horizontally to the nearest edge of an on-site wastewater treatment facility excavation. A person may place a properly reinforced and protected wastewater treatment facility, except for disposal works, at any location relative to a driveway if access openings, risers, and covers carry the design load and are protected from inflow.

13. Swimming pool excavation	5	Except if soil loading or stability concerns indicate the need for a greater separation distance.
14. Easement (except drainage easement)	5	None
15. Earth fissures	100	None
* A "common drinking water system" means a system that currently serves or is under legal obligation to serve the property and may include a drinking water utility, a well-sharing agreement, or other viable water supply agreement.		

D. Soil absorption rate (SAR) and disposal works sizing.

1. An applicant shall determine the soil absorption area by dividing the design flow by the applicable soil absorption rate. If soil characterization and percolation test methods yield different SAR values or if multiple applications of the same approach yield different values, the designer of the disposal works shall use the lowest SAR value unless a higher SAR value is proposed and justified to the Department's satisfaction in the Notice of Intent to Discharge.
2. The SAR used to calculate disposal works size for systems described in R18-9-E302 is as follows:
   a. The SAR by percolation testing as described in R18-9-A310(F) or (G), as applicable, is determined as follows:

Percolation Rate from Percolation Test (minutes per inch)	**SAR, Trench, Chamber, and Pit (gal/day/ft^2)**	**SAR, Bed (gal/day/ft^2)**
Less than 1.00	A site-specific SAR is required	A site-specific SAR is required
1.00 to less than 3.00	1.20	0.93
3.00	1.10	0.73
4.00	1.00	0.67
5.00	0.90	0.60
7.00	0.75	0.50
10.0	0.63	0.42
15.0	0.50	0.33

20.0	0.44	0.29
25.0	0.40	0.27
30.0	0.36	0.24
35.0	0.33	0.22
40.0	0.31	0.21
45.0	0.29	0.20
50.0	0.28	0.19
55.0	0.27	0.18
55.0+ to 60.0	0.25	0.17
60.0+ to 120	0.20	0.13
Greater than 120	A site-specific SAR is required	A site-specific SAR is required

b. The SAR using the soil evaluation method described in R18-9-A310(E) is determined by answering the questions in the following table. The questions are read in sequence starting with "A." The first "yes" answer determines the SAR. A seepage pit is required to determine percolation rate under the procedure described in R18-9-A310(G) and would only use this table to augment the percolation test results, if appropriate.

Sequence of Soil Characteristics Questions	**SAR, Trench, Chamber, and Pit gal/day/ft^2**	**SAR, Bed gal/day/ft^2**
A. Is the horizon gravelly coarse sand or coarser?	A site-specific SAR is required	A site-specific SAR is required
B. Is the structure of the horizon moderate or strongly platy?	A site-specific SAR is required	A site-specific SAR is required
C. Is the texture of the horizon sandy clay loam, clay loam, silty clay loam, or finer and the soil structure weak platy?	A site-specific SAR is required	A site-specific SAR is required
D. Is the moist ~~consistency~~ consistence stronger than firm or any cemented class?	A site-specific SAR is required	A site-specific SAR is required

E. Is the texture sandy clay, clay, or silty clay of high clay content and the structure massive or weak?	A site-specific SAR is required	A site-specific SAR is required
F. Is the texture sandy clay loam, clay loam, silty clay loam, or ~~silty~~ silt loam and the structure massive?	A site-specific SAR is required	A site-specific SAR is required
G. Is the texture of the horizon loam or sandy loam and the structure massive?	0.20	0.13
H. Is the texture sandy clay, clay, or silty clay of low clay content and the structure moderate or strong?	0.20	0.13
I. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure weak?	0.20	0.13
J. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure moderate or strong?	0.40	0.27
K. Is the texture sandy loam, loam, or silty loam and the structure weak?	0.40	0.27
L. Is the texture sandy loam, loam, or silt loam and the structure moderate or strong?	0.60	0.40
M. Is the texture fine sand, very fine sand, loamy fine sand, or loamy very fine sand?	0.40	0.27
N. Is the texture loamy sand or sand?	0.80	0.53
O. Is the texture coarse sand?	1.20	A site-specific SAR is required

c. If the percolation rate determined under R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in subsection (2)(a) above, the applicant must use the higher of the two listed percolation rates to obtain the most conservative SAR.

3. For an on-site wastewater treatment facility described in a general permit other than R18-9-E302, the SAR is dependent on the ability of the facility to reduce the level of TSS and BOD_5 and is calculated using the following formula:

a. "SAR_a" is the adjusted soil absorption rate for disposal works design in gallons per day per square foot,

b. "TSS" is the total suspended solids in wastewater delivered to the disposal works in milligrams per liter,

c. "BOD_5" is the five-day biochemical oxygen demand of wastewater delivered to the disposal works in milligrams per liter, and

d. "SAR" is the soil absorption rate for septic tank effluent determined by the subsurface characterization method described in R18-9-A310.

4. An applicant shall ensure that the facility is designed so that the area of the intended installation is large enough to allow for construction of the facility and for future replacement or repair and is at least as large as the following:

a. For a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works. A reserve area is not required for a lot in a subdivision approved before 1974 if the lot conforms to its original approved configuration;

b. For other than a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works.

5. An applicant shall ensure that the subsurface disposal works is designed to achieve the design flow established in R18-9-A309(B)(3) through proper hydraulic function, including conditions of seasonally cold and wet weather.

E. Vertical separation distances.

1. Minimum vertical separation to the seasonal high water table for a disposal works described in R18-9-E302 receiving septic tank effluent. For a disposal works described in R18-9-E302 receiving septic tank effluent <u>at a facility where the septic tank and disposal system described in R18-9-E302 is the sole method of treatment and disposal of wastewater</u>, the minimum vertical separation distance between the lowest point in the disposal works and the seasonal high water table is dependent on the soil absorption rate and is determined as follows:

Soil Absorption Rate (gallons per day per square foot)			**Minimum Vertical Separation Between The Bottom Of The Disposal Works And The Seasonal High Water Table (feet)**	
Trench and Chamber	Bed	Seepage Pit	Trench, Chamber, and Bed	Seepage Pit
1.20+	0.93+	1.20+	Not allowed for septic tank effluent	Not Allowed
0.63+ to 1.20	0.42 to 0.93	0.63+ to 1.20	10	60
0.20 to 0.63	0.13 to 0.42	0.36 to 0.63	5	60

Less than 0.20	Less than 0.13	Less than 0.36	Not allowed for septic tank effluent	Not Allowed

2. Minimum vertical separation to the seasonal high water table for treatment and disposal works technologies described in R18-9-E303 through R18-9-E322. If the minimum vertical separation distance to the seasonal high water table for a disposal works receiving septic tank effluent specified in subsection (E)(1) is not met, the applicant shall comply with the following:
   a. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml) delivered to native soil at the bottom of the disposal works. The applicant shall use the following table to select works that achieve a reduced total coliform concentration corresponding to the available vertical separation distance between the bottom of the disposal works and the seasonal high water table:

Available Vertical Separation Distance Between the Bottom of The Disposal Works and the Seasonal High Water Table (feet)		**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Natural Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
For SAR*, 0.20 to 0.63	**For SAR*, 0.63+ to 1.20**	
5	10	8**
4	8	7
3.5	7	6
3	6	5
2.5	5	4
2	4	3
1.5	3	2
1	2	1
0	0	0***

* Soil absorption rate from percolation testing or soil characterization, in gallons per square foot per day.

** Nominal value for a standard septic tank and disposal field (10^8 colony forming units per 100 ml).

*** Nominally free of coliform bacteria.

b. Include a hydraulic analysis with the Notice of Intent to Discharge, based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater downward and laterally without surfacing for the site conditions at the disposal works.

3. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(d) that may cause or contribute to surfacing of wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(d) exists at the location of the disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of acceptable native soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 4 feet thick, and
      ii. The zone of soil is sufficiently permeable to conduct wastewater released from the disposal works vertically downward and laterally without causing surfacing of the wastewater as documented by a hydraulic analysis submitted with the Notice of Intent to Discharge that is based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b);
   b. The subsurface limiting condition is thin enough to allow placement of a disposal works into acceptable native soil beneath the subsurface limiting condition if the following criteria are met:
      i. The bottom of the subsurface limiting condition is not deeper than 10 feet below the land surface, and
      ii. The vertical separation distance from the bottom of the disposal works to the seasonal high water table complies with subsection (E)(1) or (2), as applicable; or
   c. If the disposal works is placed above the subsurface limiting condition and the depth to the subsurface limiting condition is less than 4 feet below the bottom of the disposal works, the design for the on-site wastewater treatment facility shall comply with all of the following:
      i. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml), delivered to acceptable native soil at the bottom of the disposal works, as follows:

Available Vertical Separation Distance from the Bottom of the Disposal Works to the	**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Acceptable**

Subsurface Limiting Condition (feet)	Native Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)
3.5	7
3	6
2.5	5
2	4
1.5	0*
1	0*
0.5	0*
0	0*

* Nominally free of coliform bacteria.

ii. ~~If the SAR of the native soil into which the disposal works is placed is not more than 0.63 gallons per day per square foot, include~~ Include a hydraulic analysis with the Notice of Intent to Discharge, based on the location and dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater vertically downward and laterally without surfacing for the site conditions at the disposal works; and

iii. If a disinfection device under R18-9-E320 is proposed but is not used with surface disposal of wastewater under R18-9-E321 or "Category A" drip irrigation disposal under R18-9-E322, provide a justification with the Notice of Intent to Discharge stating why the selected type of disposal works is favored over disposal under R18-9-E321 or R18-9-E322.

4. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(e) that promotes accelerated downward movement of insufficiently treated wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(e) exists at the location of the proposed disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of naturally occurring soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 2 feet thick, and
      ii. The SAR of the soil is not less than 0.20 gallons per day per square foot nor more than 1.20 gallons per day per square foot; or

b. The on-site wastewater treatment facility employs one or more technologies described in R18-9-E303 through R18-9-E322 that produces treated wastewater that meets a total coliform concentration of 1,000,000 ($Log_{10}6$) colony forming units per 100 milliliters, 95th percentile.

F. Materials and manufactured system components.

1. Materials. An applicant shall use aggregate if no specification for disposal works material is provided in this Article.
2. Manufactured components. If manufactured components are used, an applicant shall design, install, and operate the on-site wastewater treatment facility following the manufacturer's specifications. The applicant shall ensure that:
   a. Treatment and containment components, mechanical equipment, instrumentation, and controls have monitoring, inspection, access and cleanout ports or covers, as appropriate, for monitoring and service;
   b. Treatment and containment components, pipe, fittings, pumps, and related components and controls are durable, watertight, structurally sound, and capable of withstanding stress from installation and operational service; and
   c. Distribution lines for disposal works are constructed of ~~clay tile laid with open joints, perforated clay pipe,~~ perforated high density polyethylene pipe, perforated ABS pipe, ~~or~~ perforated PVC pipe, or other pipe material, if the pipe is suitable for wastewater disposal use and sufficient openings are available for distribution of the wastewater into the trench or bed area.
3. Electronic components. When electronic components are used, the applicant shall ensure that:
   a. The component connections are compliant with the electrical code encompassed in the local building codes applicable in the county in which the facility is installed, except as required for a pressure distribution system under R18-9-E304(D)(2)(e);
   ~~a.~~b. Instructions and a wiring diagram are mounted on the inside of a control panel cover;
   ~~b.~~c. The control panel is equipped with a multimode operation switch, red alarm light, buzzer, and reset button;
   ~~c.~~d. The multimode operation switch operates in the automatic position for normal system operation; and
   ~~d.~~e. An anomalous condition is indicated by a glowing alarm light and sounding buzzer. The continued glowing of the alarm light after pressing the reset button shall signal the need for maintenance or repair of the system at the earliest practical opportunity.
4. If a conflict exists between this Article and the manufacturer's specifications, the requirements of this Article apply. Except for the requirements in subsection (D) and (E), which always apply, if the conflict voids a manufacturer's warranty, the applicant may submit a request under subsection (G) justifying use of the manufacturer's specifications.

G. Alternative design, setback, installation, or operational features. When an applicant submits a Notice of Intent to Discharge, the applicant may request that the Department review and approve a feature of improved or alternative technology, design, setback, installation, or operation that differs from a general permit requirement in this Article. Designs incorporating alternative features already approved in a current listing on the "proprietary and

other reviewed product list" pursuant to R18-9-A309(E) do not need additional approval under this subsection for only those specific alternative features already approved in the proprietary products listing.

1. The applicant shall make the request for an improved or alternative feature of technology, design, setback, installation, or operation on a form provided by the Department and include:
   a. A description of the requested change;
   b. A citation to the applicable feature or technology, design, setback, installation, or operational requirement for which the change is being requested; and
   c. Justification for the requested change, including any necessary supporting documentation.
2. The applicant shall submit the appropriate fee specified under 18 A.A.C. 14 for each requested change. For purposes of calculating the fee, a requested change that is applied multiple times in a similar manner throughout the facility is considered a single request if submitted for concurrent review.
3. The applicant shall provide sufficient information for the Department to determine that the change achieves equal or better performance compared with the general permit requirement, or addresses site or system conditions more satisfactorily than the requirements of this Article.
4. The Department shall review and may approve the request for change.
5. The Department shall deny the request for the change if the change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.
6. The Department shall deny the request for the change if the change:
   a. Fails to achieve equal or better performance compared to the general permit requirement;
   b. Fails to address site or system conditions more satisfactorily than the general permit requirement;
   c. Is insufficiently justified based on the information provided in the submittal;
   d. Requires excessive review time, research, or specialized expertise by the Department to act on the request; or
   e. For any other justifiable cause.
7. The Department may approve a reduced setback for a facility authorized to discharge under one or more of the general permits in ~~R18-9-E303 through R18-9-E322~~ R18-9-E302 through R18-9-E323, either separately or in combination ~~with a septic tank system authorized under R18-9-E302~~, if the applicant additionally demonstrates ~~that~~ at least one of the following:
   a. The treatment performance is significantly better than that provided under R18-9-E302(B),
   b. The wastewater loading rate is reduced, or
   c. Surface or subsurface characteristics ensure that reduced setbacks are protective of human health or water quality.

R18-9-A314.Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A person shall not install a septic tank in an on-site wastewater treatment facility unless the tank meets the following requirements:

1. The tank is:
   a. Designed to produce a clarified effluent and provide adequate space for sludge and scum accumulations;

b. Watertight and constructed of solid durable materials not subject to excessive corrosion or decay;

c. Manufactured with at least two compartments unless two separate structures are placed in series. The tank is designed so that:

   i. The inlet compartment of any septic tank not placed in series is nominally 67 percent to 75 percent of the total required capacity of the tank,

   ii. Septic tanks placed in series are considered a unit and meet the same criteria as a single tank,

   iii. The liquid depth of the septic tank is at least 42 inches, and

   iv. A septic tank of 1000 gallon capacity is at least 8 feet long and the tank length of septic tanks of greater capacity is at least 2 times but not more than 3 times the width;

d. Manufactured with at least two access openings to the tank interior, each at least 20 inches in diameter. The tank is designed so that:

   i. One access opening is located over the inlet end of the tank and one access opening is located over the outlet end;

   ii. Whenever a first compartment exceeds 12 feet in length, another access opening is provided over the baffle wall; and

   iii. Access openings and risers are constructed to ensure accessibility within 6 inches below finished grade;

e. Manufactured so that the sewage inlet and wastewater outlet openings are not smaller than the connecting sewer pipe. The tank is designed so that:

   i. The vertical leg of round inlet and outlet fittings is at least 4 inches but not smaller than the connecting sewer pipe, and

   ii. A baffle fitting has the equivalent cross-sectional area of the connecting sewer pipe and not less than a 4 inch horizontal dimension if measured at the inlet and outlet pipe inverts;

f. Manufactured so that the inlet and outlet pipe or baffle extends 4 inches above and at least 12 inches below the water surface when the tank is installed according to the manufacturer's instructions consistent with this Chapter. The invert of the inlet pipe is at least 2 inches above the invert of the outlet pipe;

g. Manufactured so that the inlet and outlet fittings or baffles and compartment partitions have a free vent area equal to the required cross-sectional area of the connected sewer pipe to provide free ventilation above the water surface from the disposal works or seepage pit through the septic tank, house sewer, and stack to the outer air;

h. Manufactured so that the open space extends at least 9 inches above the liquid level and the cover of the septic tank is at least 2 inches above the top of the inlet fitting vent opening;

i. Manufactured so that partitions or baffles between compartments are of solid durable material (wooden baffles are prohibited) and extend at least 4 inches above the liquid level. The open area of the baffle shall be between one and 2 times the open area of the inlet pipe or horizontal slot and located at the midpoint of the liquid level of the baffle. If a horizontal slot is used, the slot shall be no more than 6 inches in height;

j. Structurally designed to withstand all anticipated earth or other loads. The tank is designed so that:
   i. All septic tank covers are capable of supporting an earth load of 300 pounds per square foot; and
   ii. If the top of the tank is greater than 2 feet below finish grade, the septic tank and cover are capable of supporting an additional load of 150 pounds per square foot for each additional foot of cover;

k. Manufactured or installed so that the influent and effluent ends of the tank are clearly and permanently marked on the outside of the tank with the words "INLET" or "IN," and "OUTLET" or "OUT," above or to the right or left of the corresponding openings; and

l. Clearly and permanently marked with the manufacturer's name or registered trademark, or both, the month and year, or Julian date, of manufacture, the maximum recommended depth of earth cover in feet, and the design liquid capacity of the tank. The tank is manufactured to protect the markings from corrosion so that they remain permanent and readable for the operational life of the tank.

2. Materials used to construct or manufacture septic tanks.

a. A septic tank cast-in-place at the site of use shall be protected from corrosion by coating the tank with a bituminous coating, by constructing the tank using a concrete mix that incorporates 15 percent to 18 percent fly ash, or by any other Department-approved means. The tank is designed so that:
   i. The coating extends at least 4 inches below the wastewater line and covers all of the internal area above that point; and
   ii. A septic tank cast-in-place complies with the "Building Code Requirements for Structural Concrete and Commentary ACI 318-02/318R-02 (2002)," and the "Code Requirements for Environmental Engineering Concrete Structures and Commentary, ACI 350/350R-01 (2001)," published by the American Concrete Institute. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from American Concrete Institute, P.O. Box 9094, Farmington Hills, MI 48333-9094.

b. A steel septic tank shall have a minimum wall thickness of No. 12 U.S. gauge steel and be protected from corrosion, internally and externally, by a bituminous coating or other Department-approved means.

c. A prefabricated concrete septic tank shall meet the "Standard Specification for Precast Concrete Septic Tanks, ~~C1227-03~~C1227-20," published by the American Society for Testing and Materials. This information is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International West.

d. A septic tank manufactured using fiberglass or ~~polyethylene~~ thermoplastic shall meet the requirements set forth in ~~"Material and Property Standards for Prefabricated Septic Tanks, IAPMO PS 1 2004,"~~ "Prefabricated Septic Tanks – IAPMO/ANSI Z1000-2019," published by the International Association of Plumbing and Mechanical Officials. This information is incorporated by reference, does not include

any later amendments or editions of the incorporated material, and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or obtained from International Association of Plumbing ~~&~~ and Mechanical Officials, ~~20001 E. Walnut Drive, South Walnut, CA 91789-2825~~ 4755 E. Philadelphia Street, Ontario, CA 917761.

3. Conformance with design, materials, and manufacturing requirements.
   a. If any conflict exists between this Article and the information incorporated by reference in subsection (2), the requirements of this Article apply.
   b. The Department may approve use of alternative construction materials under R18-9-A312(G). Tanks constructed of wood, block, or bare steel are prohibited.
   c. The Department may inspect septic tanks at the site of manufacturing to verify compliance with subsections (1) and (2).
   d. The septic tank sale documentation includes:
      i. A certificate attesting that the septic tank conforms with the design, materials, and manufacturing requirements in subsections (1) and (2); and
      ii. Instructions for handling and installing the septic tank.
4. The septic tank's daily design flow is determined as follows:
   a. For a single family dwelling:
      i. The design liquid capacity of the septic tank and the septic tank's daily design flow are determined based on the number of bedrooms and fixture count as follows:

Criteria for Septic Tank Size and Design Flow			
Number of Bedrooms	**Fixture Count**	**Minimum Design Liquid Capacity (gallons)**	**Design Flow (gal/day)**
1	7 or less	1000	150
	More than 7	1000	300
2	14 or less	1000	300
	More than 14	1000	450
3	21 or less	1000	450
	More than 21	1250	600

4	28 or less	1250	600
	More than 28	1500	750
5	35 or less	1500	750
	More than 35	2000	900
6	42 or less	2000	900
	More than 42	2500	1050
7	49 or less	2500	1050
	More than 49	3000	1200
8	56 or less	3000	1200
	More than 56	3000	1350

ii. Fixture count is determined as follows:

Residential Fixture Type	**Fixture Units**	**Residential Fixture Type**	**Fixture Units**
Bathtub	2	Sink, bar	1
Bidet	2	Sink, kitchen (including dishwasher	2
Clothes washer	2	Sink, service	3
Dishwasher (Separate from kitchen)	2	Utility tub or sink	2
Lavatory, single	1	Water closet, 1.6 gallons per flush (gpf)	3

Lavatory, double in master bedroom	1	Water closet, >1.6 to 3.2 gpf	4
Shower, single stall	2	Water closet, greater than 3.2 gpf	6

b. For other than a single family dwelling, the design liquid capacity of a septic tank in gallons is 2.1 times the daily design flow into the tank as determined from Table 1, Unit Design Flows. If the wastewater strength exceeds that of typical sewage, additional tank volume is required.

c. A person may place two septic tanks in series to meet the septic tank design liquid capacity requirements if the capacity of the first tank is at least 67 percent of the total required tank capacity and the capacity of the second tank is at least 33 percent of the total required tank capacity.

5. The following requirements regarding new or replacement septic tank installation apply:

a. Permanent surface markers for locating the septic tank access openings are provided for maintenance;

b. A septic tank installed under concrete or pavement has the required access openings extended to grade;

c. A septic tank effluent filter is installed on the septic tank. The filter shall:

i. Prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head; and

ii. Be constructed of materials that are resistant to corrosion and erosion, sized to accommodate hydraulic and organic loading, and removable for cleaning and maintenance; and

d. The septic tank is tested for watertightness after installation by the water test described in subsections (5)(d)(i) and (5)(d)(ii) and repaired or replaced, if necessary.

i. The septic tank is filled with clean water, as specified in R18-9-A310(A), to the invert of the outlet and the water left standing in the tank for 24 hours and:

(1) After 24 hours, the tank is refilled to the invert, if necessary;

(2) The initial water level and time is recorded; and

(3) After one hour, water level and time is recorded.

ii. The tank passes the water test if the water level does not drop over the one-hour period. Any visible leak of flowing water is considered a failure. A damp or wet spot that is not flowing is not considered a failure.

R18-9-A315.Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A. Interceptor requirement. An applicant shall ensure that an interceptor as required by R18-9-A309(A)(7)(c) or necessary due to excessive amounts of grease, garbage, sand, or other wastes in the sewage is installed between the sewage source and the on-site wastewater treatment facility.

B. Interceptor design. An applicant shall ensure that:

1. An interceptor has not less than two compartments with fittings designed for grease retention and capable of removing excessive amounts of grease, garbage, sand, or other similar wastes. An interceptor may not accept human excreta or toilet wastewater. Applicable structural and materials requirements prescribed in R18-9-A314 apply;
2. Interceptors are located as close to the source as possible and are accessible for servicing. The applicant shall ensure that access openings for servicing are at grade level and gas-tight;
3. The interceptor size for grease and garbage from non-residential kitchens is calculated using by the following equation: Interceptor Size (in gallons) = M × F × T × S.
    a. "M" is the number of meals per peak hour;
    b. "F" is the applicable waste flow rate from Table 1, Unit Design Flows.
    c. "T" is the estimated retention time:
        i. Commercial kitchen waste, dishwasher or disposal: 2.5 hours; or
        ii. Single service kitchen with utensil wash disposal: 1.5 hours;
    d. "S" is the estimated storage factor:
        i. Fully equipped commercial kitchen, 8-hour operation: 1.0;
        ii. Fully equipped commercial kitchen, 16-hour operation: 2.0;
        iii. Fully equipped commercial kitchen, 24-hour operation: 3.0; or
        iv. Single service kitchen, 1.5;
4. The interceptor size for silt and grease from laundries and laundromats is calculated using the following equation: Interceptor Size (in gallons) = M × C × F × T × S.
    a. "M" is the number of machines;
    b. "C" is the machine cycles per hour (assume 2);
    c. "F" is the waste flow rate from Table 1, Unit Design Flows;
    d. "T" is the estimated retention time (assume 2); and
    e. "S" is the estimated storage factor (assume 1.5 that allows for rock filter).

C. The applicant may calculate the size of an interceptor using different factor values than those given in subsections (B)(3) and (4) based on the values justified by the applicant in the Notice of Intent to Discharge submitted to the Department for the on-site wastewater treatment facility.

D. The Department may require installation of a sampling box if the volume or characteristics of the waste will impair the performance of the on-site wastewater treatment facility.

PART E. TYPE 4 GENERAL PERMITS

R18-9-E303.4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow

A. A 4.03 General Permit allows for the use of a composting toilet with less than 3000 gallons per day design flow.

1. Definition. For purposes of this Section, "composting toilet" means a manufactured turnkey or kit form treatment technology that receives human waste from a waterless toilet directly into an aerobic composting

chamber where dehydration and biological activity reduce the waste volume and the content of nutrients and harmful microorganisms to an appropriate level for later disposal at the site or by other means.

2. An applicant may use a composting toilet if:
   a. Limited water availability prevents use of other types of on-site wastewater treatment facilities,
   b. Environmental constraints prevent the discharge of wastewater or nutrients to a sensitive area,
   c. Inadequate space prevents use of other systems,
   d. Severe site limitations exist that make other forms of treatment or disposal unacceptable, or
   e. The applicant desires maximum water conservation.
3. A permittee may use a composting toilet only if:
   a. Wastewater is managed as provided in this Section and, if gray water is separated and reused, the gray water reuse complies with18 A.A.C. 9, Article 7; and
   b. Soil conditions support subsurface disposal of all wastewater sources.

B. Restrictions.

1. A permittee shall ensure that no more than 50 persons per day use the composting toilet.
2. A composting toilet shall only receive human excrement unless the manufacturer's specifications allow the deposit of kitchen or other wastes into the toilet.

C. Performance. An applicant shall ensure that:

1. The composting toilet provides containment to prevent the discharge of toilet contents to the native soil except leachate, which may drain to the wastewater disposal works described in subsection (F);
2. The composting toilet limits access by vectors to the contained waste; and
3. Wastewater is disposed into the subsurface to prevent any wastewater from surfacing.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit the following information:

1. Composting toilet.
   a. The name and address of the composting toilet system manufacturer;
   b. A copy of the manufacturer's warranty, and the specifications for installation operation, and maintenance;
   c. The product model number;
   d. Composting rate, capacity, and waste accumulation volume calculations;
   e. Documentation of listing by a national listing organization indicating that the composting toilet meets the stated manufacturer's specifications for loading, treatment performance, and operation, unless the composting toilet is listed under R18-9-A309(E) or is a component of a reference design approved by the Department;
   f. The method of vector control;
   g. The planned method and frequency for disposing the composted human excrement residue; and
   h. The planned method for disposing of the drainage from the composting unit; and
2. Wastewater.

a. The number of bedrooms in the dwelling or persons served on a daily basis, as applicable, and the corresponding design flow of the disposal works for the wastewater;

b. The results from soil evaluation or percolation testing that adequately characterize the soils into which the wastewater will be dispersed and the locations of soil evaluation and percolation testing on the site plan; and

c. The design for the disposal works in subsection (F), including the location of the interceptor, the location and configuration of the trench or bed used for wastewater dispersal, the location of connecting wastewater pipelines, and the location of the reserve area.

E. Design requirements for a composting toilet. An applicant shall ensure that:

1. The composting chamber is watertight, constructed of solid durable materials not subject to excessive corrosion or decay, and is constructed to exclude access by vectors;
2. The composting chamber has airtight seals to prevent odor or toxic gas from escaping into the building. The system may be vented to the outside;
3. The capacity of the chamber and rate of composting are calculated based on:
   a. The lowest monthly average chamber temperature; or
   b. The yearly average chamber temperature, if the composting toilet is designed to compost on a yearly cycle or longer; and
4. The composting system provides adequate storage of all waste produced during the months when the average temperature is below 55°F, unless a temperature control device is installed to increase the composting rate and reduce waste volume.

F. Design requirements for the disposal works.

1. Interceptor. An applicant shall ensure that the design complies with the following:
   a. An interceptor may not accept human excreta or toilet wastewater;
   ~~a.~~b. Wastewater passes into an interceptor before it is conducted to the subsurface for dispersal;
   ~~b.~~c. The interceptor is designed to remove grease, oil, fibers, and solids to ensure long-term performance of the trench or bed used for subsurface dispersal;
   ~~c.~~d. The interceptor is covered to restrict access and eliminate habitat for mosquitoes and other vectors; and
   ~~d.~~e. Minimum interceptor size is based on design flow.
      i. For a dwelling, the following apply:

		Minimum Interceptor Size (gallons)

No. of Bedrooms	Design Flow (gallons per day)	Kitchen Wastewater Only (All gray water sources are collected and reused)	Combined Non-Toilet Wastewater (Gray water is not separated and reused)
1 (7 fixture units or less)	90	42	200
1-2 (greater than 7 fixture units)	180	84	400
3	270	125	600
4	330	150	700
5	380	175	800
6	420	200	900
7	460	225	1000

ii. For other than a dwelling, minimum interceptor size in gallons is 2.1 times the design flow from Table 1, Unit Design Flows.

2. Dispersal of wastewater. An applicant shall ensure that the design complies with the following:
   a. A trench or bed is used to disperse the wastewater into the subsurface;
   b. Sizing of the trench or bed is based on the design flow ~~of wastewater~~ as determined in subsection ~~(F)(1)(d)~~ (F)(1)(e), including all black and gray water, and an SAR determined under R18-9-A312(D);
   c. The minimum vertical separation from the bottom of the trench or bed to a limiting subsurface condition is at least 5 feet; and
   d. Other aspects of trench or bed design follow R18-9-E302, as applicable.
3. Setback distances. Setback distances are no less than 1/4 of the setback distances specified in R18-9-A312(C), but not less than 5 feet, except the setback distance from wells is 100 feet.

G. Operation and maintenance requirements. A permittee shall:

1. Composting toilet.
   a. Provide adequate mixing, ventilation, temperature control, moisture, and bulk to reduce fire hazard and prevent anaerobic conditions;
   b. Follow manufacturer's specifications for addition of any organic bulking agent to control liquid drainage, promote aeration, or provide additional carbon;

c. Follow the manufacturer's specifications for operation and maintenance regarding movement of material within the composting chamber;

d. If batch system containers are mounted on a carousel, place a new container in the toilet area if the previous one is full;

e. Ensure that only human waste, paper approved for septic tank use, and the amount of bulking material required for proper maintenance is introduced to the composting chamber. The permittee shall remove all other materials or trash. If allowed by the manufacturer's specifications the permittee may add, other nonliquid compostable food preparation residues to the toilet;

f. Ensure that any liquid end product is:

i. Sprayed back onto the composting waste material;

ii. Removed by a person who licensed a vehicle under 18 A.A.C. 13, Article 11; or

iii. Is drained to the interceptor described in subsection (F);

g. Remove and dispose of composted waste as necessary, using a person who licensed a vehicle under 18 A.A.C. 13, Article 11 if the waste is not placed in a disposal area for burial or used on-site as mulch;

h. Before ending use for an extended period take measures to ensure that moisture is maintained to sustain bacterial activity and free liquids in the chamber do not freeze; and

i. After an extended period of non-use, empty the composting chamber of solid end product and inspect all mechanical components to verify that the mechanical components are operating as designed;

2. Wastewater Disposal Works.

a. Ensure that the interceptor is maintained regularly according to manufacturer's instructions to prevent grease and solid wastes from impairing performance of the trench or bed used for dispersal of wastewater, and

b. Protect the area of the trench or bed from soil compaction or other activity that will impair dispersal performance.

H. Reference design.

1. An applicant may use a composting toilet that achieves the performance requirements in subsection (C) by following a reference design on file with the Department.

2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

R18-9-E304.4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.04 General Permit allows for the use of a pressurized distribution of wastewater system with a design flow less than 3000 gallons per day that treats wastewater to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "pressure distribution system" means a tank, pump, controls, and piping that conducts wastewater under pressure in controlled amounts and intervals to a bed or trench or other means of distribution authorized by a general permit for an on-site wastewater treatment facility.

2. An applicant may use a pressure distribution system if a gravity flow system is unsuitable, inadequate, unfeasible, or cost prohibitive because of site limitations or other conditions, or if needed to optimally distribute wastewater.

B. Performance. An applicant shall ensure that a pressure distribution system:

1. Disperses wastewater so that:
   a. Loading rates are optimized for the intended purpose, and
   b. The wastewater is delivered under pressure and evenly distributed within the disposal works, and
2. Prevents ponding on the land surface.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit:

1. A copy of operation, maintenance, and warranty materials for the principal components; and
2. A copy of dosing specifications, including pump curves, dispersing component details, and float control settings.

D. Design requirements.

1. Pumps. An applicant shall ensure that pumps used in the on-site wastewater treatment facility:
   a. Are rated for wastewater service by the manufacturer and certified by Underwriters Laboratories;
   b. Achieve the minimum design flow rate and total dynamic head requirements for the particular site; and
   c. Incorporate a quick disconnect using compression-type unions for pressure connections. The applicant shall ensure that:
      i. Quick-disconnects are accessible in the pressure piping, and
      ii. A pump has adequate lift attachments for removal and replacement of the pump and switch assembly without entering the dosing tank or process chamber.
2. Switches, controls, alarms, timers, and electrical components. An applicant shall ensure that:
   a. Switches and controls accommodate the minimum and maximum dose capacities of the distribution network design. The applicant shall not use pressure diaphragm level control switches;
   b. Fail-safe controls that can be tested in the field are used to prevent discharge of inadequately treated wastewater. The applicant shall include counters or flow meters if critical to control functions, such as timed dosing;
   c. Control panels and alarms:
      i. Are either mounted in an exterior location visible from the ~~dwelling~~ structure served, mounted in a conspicuous location on the side of the structure served, or mounted in a conspicuous location adjacent to the structure served,
      ii. Provide manual pump switch and alarm test features, and
      iii. Include written instructions covering standard operation and alarm events;
   d. Audible and visible alarms are used for all critical control functions, such as pump failures, treatment failures, and excess flows. The applicant shall ensure that:

i. The visual portion of the signal is conspicuous from a distance 50 feet from the system and its appurtenances;

ii. The audible portion of the signal is between 70 and 75 db at 5 feet and is discernible from a distance of 50 feet from the system and its appurtenances; ~~and~~

iii. Alarms, test features, and controls are on a non-dedicated electrical circuit ~~associated with a frequently used household lighting fixture and~~ separate from the dedicated circuit for the pump with constant visual confirmation that the circuit is electrically active; and

iv. The alarm is clearly audible and visible inside the structure served;

e. All electrical wiring complies with the National Electrical Code, 2005 Edition, published by the National Fire Protection Association. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. The applicant shall ensure that:

i. Connections are made using National Electrical Manufacturers Association (NEMA) 4x junction boxes certified by Underwriters Laboratories; and

ii. All controls are in NEMA 3r, 4, or 4x enclosures for outdoor use.

3. Dosing tanks and wastewater distribution components.

a. An applicant shall:

i. Design dosing tanks to withstand anticipated internal and external loads under full and empty conditions, and design concrete tanks to meet the "Standard Specification for Precast Concrete Water and Wastewater Structures, C913-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;

ii. Design dosing tanks to be easily accessible and have secured covers;

iii. Install risers to provide access to the inlet and outlet of the tank and to service internal components;

iv. Ensure that the volume of the dosing tank accommodates bottom depth below maximum drawdown, maximum design dose, including any drainback, volume to high water alarm, and a reserve volume above the high water alarm level that is not less than the daily design flow volume. If the tank is time dosed, the applicant shall ensure that the combined surge capacity and reserve volume above the high water alarm is not less than the daily design flow volume;

v. Ensure that dosing tanks are watertight and anti-buoyant;

vi. Design the wastewater distribution components to withstand system pumping pressures;

vii. Design the wastewater distribution system to allow air to purge from the system;

viii. Design pressure piping to minimize freezing during cold weather;

ix. Ensure that the end of each wastewater distribution line is accessible for maintenance;

x. Ensure that orifices emit the design discharge rate uniformly throughout the wastewater distribution system; and

xi. Design orifices using orifice shields to provide proper distribution of wastewater to the receiving medium.

b. An applicant may use a septic tank second compartment or a second septic tank in series as a dosing tank if all dosing tank requirements of this Section are met and a screened vault is used instead of the septic tank effluent filter.

4. Design SAR. If the site conditions of the property for the on-site wastewater treatment facility do not require pressure distribution, but an applicant chooses to use pressure distribution, the applicant shall use a design SAR for the absorption surfaces in the disposal works that is not more than 1.10 times the adjusted SAR determined in R18-9-A312(D).

E. Additional Discharge Authorization requirements. An applicant shall obtain copies of instructions for the critical controls of the system from the person who installed the pressure distribution system. The applicant shall submit one copy of the instructions with the information required in subsection (C).

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), a permittee shall ensure that:

1. The operation and maintenance manual for the on-site wastewater treatment facility that supplies the wastewater to the pressure distribution system specifies inspection and maintenance needed for the following items:
   a. Sludge level in the bottom of the treatment and dosing tanks,
   b. Watertightness,
   c. Condition of electrical and mechanical components, and
   d. Piping and other components functioning within design limits;
2. All critical control functions are specified in the operation and maintenance manual for testing to demonstrate compliance with design specifications, including:
   a. Alarms, test features, and controls;
   b. Float switch level settings;
   c. Dose rate, volume, and frequency, if applicable;
   d. Distal pressure or squirt height, if applicable; and
   e. Voltage test on pumps, motors, and controls, as applicable;
3. The finished grade is observed and maintained for proper surface drainage. The applicant shall observe the levelness of the tank for differential settling. If there is settling, the applicant shall grade the facility to maintain surface drainage.

R18-9-E314.4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow

A. A 4.14 General Permit allows for the use of a sewage vault that receives sewage.

1. An applicant may use a sewage vault if a severe site or operational constraint prevents installation of a conventional septic tank and disposal works or any other on-site wastewater treatment facility allowed under this Article~~.~~; or
2. An applicant may install a sewage vault as a temporary measure if connection to a sewer or installation of another on-site wastewater treatment facility occurs within two years of the connection or installation.

B. Performance. An applicant shall:
1. Not allow a discharge from a sewage vault to the native soil or land surface, and
2. Pump and dispose of vault contents at a sewage treatment facility or other sewage disposal mechanism allowed by law.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), except that a site investigation under R18-9-A309(B)(1) is not required if the reason for using a sewage vault is an operational constraint that exists irrespective of the results of a site investigation conducted under R18-9-A310(B).

D. Design requirements. In addition to the requirements in R18-9-A312, an applicant shall:
1. Install a sewage vault with a capacity that is at least 10 times the daily design flow determined by R18-9-A314(4)(a)(i),
2. Use design elements to prevent the buoyancy of the vault if installed in an area where a high groundwater table may impinge on the vault,
3. Test the sewage vault for leakage using the procedure under R18-9-A314(5)(d). The tank passes the water test if the water level does not drop over a 24-hour period,
4. Install an alarm or signal on the vault to indicate when 85 percent of the vault capacity is reached, and
5. Contract with a person who licensed a vehicle under 18 A.A.C. 13, Article 11 to pump out the vault on a schedule specified within the contract to ensure that the vault is pumped before full.

E. Installation, operation, and maintenance requirements. The applicant shall comply with the applicable installation, operation, and maintenance requirements in R18-9-A313(A) and (B).

F. Reference design.
1. An applicant may use a sewage vault that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed storage vault with the applicant's submittal of the Notice of Intent to Discharge.

R18-9-E320.4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow

A. A 4.20 General Permit allows for the use of a disinfection device to reduce the level of harmful organisms in wastewater, provided the wastewater is pretreated to equal or better than the performance criteria in R18-9-E315(B)(1)(a). An applicant may use a disinfection device if:
1. The disinfection device kills the microorganisms by exposing the wastewater to heat, ultraviolet radiation, or a chemical disinfectant.
2. Some means of disinfection is required before discharge.

3. A reduction in harmful microorganisms, as represented by the total coliform level, is needed for surface or near surface disposal of the wastewater or reduction of the minimum vertical separation distance specified in R18-9-A312(E) is desired.

B. Restrictions.

1. Unless the disinfection device is designed to operate without electricity, an applicant shall not install the device if electricity is not permanently available at the site.
2. The 4.20 General Permit does not authorize a disinfection device that releases chemical disinfectants or disinfection byproducts harmful to plants or wildlife in the discharge area or causes a violation of an Aquifer Water Quality Standard.

C. Performance. An applicant shall ensure that:

1. A fail-safe wastewater control or operational process is incorporated to prevent a release of inadequately treated wastewater;
2. The performance of a disinfection device meets the level of disinfection needed for the type of disposal and produces effluent that:
   a. Is nominally free of coliform bacteria;
   b. Is clear and odorless, and
   c. Has a dissolved oxygen content of at least 6 milligrams per liter;

D. Design requirements. An applicant shall ensure that an on-site wastewater treatment facility with a disposal works designed to discharge to the land surface includes disinfection technology that conforms with the following requirements:

1. Chlorine disinfection.
   a. Available chlorine is maintained as indicated in the following table:

pH of Wastewater (s.u.)	**Required Concentration of Available Chlorine in Wastewater (mg/L)**	
	Wastewater to the Disinfection Device Meets a TSS of 30 mg/L and BOD_5 of 30 mg/L	**Wastewater to the Disinfection Device Meets a TSS of 20 mg/L and BOD_5 of 20 mg/L**
6	15 – 30	6 – 10
7	20 – 35	10 – 20
8	30 – 45	20 – 35

b. The minimum chlorine contact time is 15 minutes for wastewater at 70°F and 30 minutes for wastewater at 50°F, based on a flow equal to four times the daily design flow;

2. Contact chambers are watertight and made of plastic, fiberglass, or other durable material and are configured to prevent short-circuiting; and

3. For a device that disinfects by another method other than chlorine disinfection, dose and contact time are determined to reliably produce treated wastewater that is nominally free of coliform bacteria, based on a flow equal to four times the daily design flow.

E. Operation and maintenance. A permittee shall ensure that:

1. If the disinfection device relies on the addition of chemicals for disinfection, the device is operated to minimize the discharge of disinfection chemicals while achieving the required level of disinfection; and

2. The disinfection device is inspected and maintained at least once every three months by a qualified person.

R18-9-E323.4.23 General Permit: 3000 to less than 24,000 Gallons Per Day Design Flow

A. A 4.23 General Permit allows for the construction and use of an on-site wastewater treatment facility with a design flow from 3000 gallons per day to less than 24,000 gallons per day or more than one on-site wastewater treatment facility on a property or on adjacent properties under common ownership with ~~an~~ a combined design flow from 3000 to less than 24,000 gallons per day if all of the following apply:

1. Except as specified in subsection (A)(3), the treatment and disposal works consists of technologies or designs that ~~are~~ would otherwise be covered under other general permits, but are either sized larger to accommodate increased flows or, will be located at a site that cumulatively accommodates flows between 3000 gallons per day to less than 24,000 gallons per day;

2. The on-site wastewater treatment facility complies with all applicable requirements of Articles 1, 2, and 3 of this Chapter;

3. The facility is not a system or a technology that would otherwise be covered by one of the following general permits available for a design flow of less than 3000 gallons per day:

   a. An aerobic system as ~~with subsurface or surface disposal~~ described in R18-9-E315;

   b. A disinfection device described in R18-9-E320, except that an ultraviolet radiation disinfection device is allowed; or

   c. A seepage pit or pits described in R18-9-E302; and

4. The discharge of total nitrogen to groundwater is controlled.

   a. An applicant shall:

      i. Demonstrate that the nitrogen loading calculated over the property served by the on-site wastewater treatment facility, including streets, common areas, and other non-contributing areas, is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field; or

      ii. Justify a nitrogen loading that is equally protective of aquifer water quality as the nitrogen loading specified in subsection (A)(4)(a)(i) based on site-specific hydrogeological or other factors.

b. For purposes of the demonstration in subsection (A)(4)(a)(i), the applicant may assume that 0.0333 pounds (15.0 grams) of total nitrogen per day per person is contributed to raw sewage and may determine the nitrogen concentration in the treated wastewater at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. A performance assurance plan consisting of tasks, schedules, and estimated annual costs for operating, maintaining, and monitoring performance over a 20-year operational life;
2. Design documents and the performance assurance plan, signed, dated, and sealed by an Arizona-registered professional engineer;
3. Any documentation submitted under the alternative design procedure in R18-9-A312(G) that pertains to achievement of better performance levels than those specified in the general permit for the corresponding facility with a design flow of less than 3000 gallons per day, or for any other alternative design, construction, or operational change proposed by the applicant; and
4. A demonstration of total nitrogen discharge control specified in subsection (A)(4).

C. Design requirements. The applicant shall comply with the applicable requirements in R18-9-A312 and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

D. Installation requirements. The applicant shall comply with the applicable requirements in R18-9-A313(A) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

E. Operation and maintenance requirements. The applicant shall comply with the applicable requirements in R18-9-A313(B) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

F. Additional Discharge Authorization requirements. In addition to any other requirements, the applicant shall submit the following information before the Discharge Authorization is issued.

1. A signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department affirming that:
   a. The project was completed in compliance with the requirements of this Section and as described in the plans and specifications, or
   b. Any changes are reflected in as-built plans submitted with the Engineer's Certificate of Completion.
2. The name of the service provider or certified operator that is responsible for implementing the performance assurance plan.

G. Reporting requirement. The permittee shall provide the Department with the following information on the anniversary date of the Discharge Authorization:

1. A form signed by the certified operator or service provider that:
   a. Provides any data or documentation required by the performance assurance plan,

b. Certifies compliance with the requirements of the performance assurance plan, and

c. Describes any additions to the facility during the year that increased flows and certifies that the flow did not exceed 24,000 gallons per day during any day; and

2. Any applicable fee required by 18 A.A.C. 14.

H. Facility expansion. If an expansion of an on-site wastewater treatment facility or site operating under this Section involves the installation of a separate on-site wastewater treatment facility on the property with a design flow of less than 3000 gallons per day, the applicant shall submit the applicable Notice of Intent to Discharge and fee required under 18 A.A.C. 14 for the separate on-site wastewater treatment facility in order to add the facility to the existing site operating under this section.

1. The applicant shall indicate in the Notice of Intent to Discharge the Department's file number and the issuance date of the Discharge Authorization previously issued by the Director under this Section for the property.
2. Upon satisfactory review, the Director shall reissue the Discharge Authorization for this Section, with the new issuance date and updated information reflecting the expansion.
3. If the expansion causes the accumulative design flow from on-site wastewater treatment facilities on the property to equal or exceed 24,000 gallons per day, the Director shall not reissue the Discharge Authorization, but shall require the applicant to submit an application for an individual permit addressing all proposed and operating facilities on the property.

Table 1. Unit Design Flows

Wastewater Source (Add together all wastewater source line items applicable to the facility per applicable unit.)	**Applicable Unit**	**Sewage Design Flow per Applicable Unit, Gallons Per Day**
Airport	~~Passenger (average daily number)~~	~~4~~
For each passenger (average daily number), add	Passenger (average daily number)	4
For each employee, add	~~Employee~~	~~15~~
	Employee	15
Auto Wash	Facility	Per manufacturer, if consistent with this Chapter
Bar/Lounge	Seat	30
Barber Shop	Chair	35
Beauty Parlor	Chair	100
Bowling Alley (snack bar only)	Lane	75

Camp		
Day camp, no cooking facilities	Camping unit	30
Campground, overnight, flush toilets	Camping unit	75
Campground, overnight, flush toilets and shower	Camping unit	150
Campground, luxury	Person	100-150
Camp, youth, summer, or seasonal	Person	50
Church		
Without kitchen	Person (maximum attendance)	5
With kitchen	Person (maximum attendance)	7
Country Club	Resident Member	100
	Nonresident Member	10
Dance Hall	Patron	5
Dental Office	Chair	500
Dog Kennel	Animal, maximum occupancy	15
Dwelling For determining design flow for sewage treatment facilities under R18-9-B202(A)(9)(a) and sewage collection systems under R18-9-E301(D) and R18-9-B301(K), excluding peaking factor.	Person	80
Dwelling For on-site wastewater treatment facilities per R18-9-E302 through R18-9-E323: Apartment Building		
1 bedroom	Apartment	200
2 bedroom	Apartment	300
3 bedroom	Apartment	400
4 bedroom	Apartment	500
Seasonal or Summer Dwelling (with recorded seasonal occupancy restriction)	Resident	100
Single Family Dwellings (for both conventional and alternative systems)	see ~~R18-9-A314(D)(1)~~ R18-9-A314(4)(a)	see ~~R18-9-A314(D)(1)~~ R18-9-A314(4)(a)

Other than Single Family Dwelling, the greater flow value based on: Bedroom count 1-2 bedrooms Each bedroom over 2 Fixture count	 Bedroom Bedroom Fixture unit	 300 150 25
Fire Station	Employee	45
Hospital All flows Kitchen waste only Laundry waste only	 Bed Bed Bed	 250 25 40
Hotel/motel (assuming outsourced linen laundry service) Without kitchen With kitchen	 Bed (2 person) Bed (2 person)	 50 60
Industrial facility Without showers With showers Cafeteria, add	 Employee Employee Employee	 25 35 5
Institutions Resident Nursing home Rest home	 Person Person Person	 75 125 125
Laundry Self service Commercial	 Wash cycle Washing machine	 50 Per manufacturer, if consistent with this Chapter
Office Building	Employee	20

Park (temporary use) Picnic, with showers, flush toilets Picnic, with flush toilets only Recreational vehicle, no water or sewer connections Recreational vehicle, with water and sewer connections Mobile home/Trailer	 Parking space Parking space Vehicle space Vehicle space Space	 40 20 75 100 250
Restaurant/Cafeteria For each employee, add With toilet, add Kitchen waste – full plated service, add Kitchen waste – disposable service, add Garbage disposal, add Cocktail lounge, add ~~Kitchen waste disposal service, add~~	~~Employee~~ Employee Customer Meal Meal Meal Customer ~~Meal~~	~~20~~ 20 7 6 2 1 2 ~~2~~
Restroom, public	Toilet	200
School Staff and office Elementary, add Middle and High, add with gym & showers, add with cafeteria, add Boarding, total flow	 Person Student Student Student Student Person	 20 15 20 5 3 100
Service Station with toilets	First bay Each additional bay	1000 500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store For each employee, add Public restroom, add	~~Employee~~ Employee Square foot of retail space	~~20~~ 20 0.1
Swimming Pool, Public	Person	10
Theater Indoor Drive-in	 Seat Car space	 5 10

Note: Unit flow rates published in standard texts, literature sources, or relevant area or regional studies are considered by the Department, if appropriate to the project.

The economic, small business, and consumer impact statement

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

A. An identification of the rulemaking:

The Arizona Department of Environmental Quality (ADEQ) is amending Title 18, Chapter 9, Articles 1 and 3 of the Arizona Administrative Code (A.A.C.) to provide additional clarity and notice, correct previous errors, collect additional necessary information, and make minimal technical updates to the On-site Wastewater Treatment Facility (OWTF) general permit program or "on-site program." These changes are expected to increase efficiencies in program implementation for both customers and regulators.

The following is an explanation of:

(a) The conduct and its frequency of occurrence that the rule is designed to change.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

Regulators at the state and county level are asked questions on a daily basis to clarify various provisions of the on-site program rules. Answering these questions or answering them inconsistently is causing hours in rework for both customers and regulators alike. These rule changes are, for the most part, an attempt to clarify ADEQ's positions on how the current rules should be implemented. Where actual changes are made to the rule, the change does not exceed expected industry standards to ensure appropriate engineering and design (e.g., requiring drainage information). This rulemaking is intended to further clarify confusion created by dissonance between industry standards and the current rule language. ADEQ hopes that this rulemaking as a whole will alleviate time spent by regulators and customers to align on the current meaning of the rules, and rather focus on future rule changes to more broadly improve the OWTF permitting program, as approved by the Office of the Governor on October 25, 2022 pursuant to A.R.S. § 41-1039.

B. A brief summary of the EIS:

The overall impact of the proposed changes should be minor. The changes are intended to improve clarity, correct errors, and to better align with current industry standards. The clarifications and correction of errors should benefit everyone, but particularly OWTF permittees, who read and interpret the rules. Persons most affected by this rulemaking are current and future permittees under the OWTF permitting program. Overall, the changes are clarifications of the current state of the program. ADEQ anticipates that a few of the rule changes may have a very limited impact, likely at low-cost relative to benefit.

C. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules:

Stakeholders for this rulemaking include home and other property owners, wastewater system designers and manufacturers, septage pumpers and haulers, sanitarians, local regulatory agencies or health departments (especially in those counties with delegated authorities under these rules), wastewater system engineers, contractors and developers (typically in rural or suburban areas), and the general public.

The stakeholders most likely affected by these rule changes are ADEQ's delegated county partners implementing this program on ADEQ's behalf, and designers of on-site wastewater treatment facilities.

D. Cost/benefit analysis:

This cost/benefit analysis includes an analysis of the probable costs and benefits to:

- The implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking, including the number of new full-time employees (FTEs) necessary to implement and enforce the rule.
- A political subdivision of this state directly affected by the implementation and enforcement of the rulemaking.
- Businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking.
- Other stakeholders directly affected by the rulemaking

The cost/benefit analysis consists of two parts. Part I is a Cost/Benefit Stakeholder Impact Matrix to summarize impacts, and Part II consists of additional detail to explain impacts, as necessary.

Part I - Cost/Benefit Stakeholder Matrix:

Estimates indicate the costs or benefits to individual entities, unless otherwise indicated.

Minimal	Moderate	Substantial	Impactful
$10,000 or less	$10,001 to $1,000,000	$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.

Description of Affected Groups	Description of Effect	Cost Increase/Decreased Revenue	Benefit /Decreased Cost/Increased Revenue
A. State and local government agencies directly affected by the implementation and enforcement of the rulemaking			
ADEQ and delegated implementing agencies	Improved implementation and enforcement of the OWTF program. Predictability, reduced transaction costs, and responsiveness to stakeholders. Staff time spent to adjust rule interpretation and implementation according to clarifications in this rulemaking. Support of ADEQ's mission to protect and enhance public health and the environment.	Impactful Impactful	 Minimal, if any. New FTEs are not needed as a result of the rulemaking Impactful
Other state or other agency permittees	Same as that for Political Subdivisions below.		
B. Political subdivisions directly affected by the implementation and enforcement of the rulemaking			
Political subdivisions generally	Clarification and correction of errors and reduction in time spent going back and forth with the implementing agency on the meaning of a particular rule. Reduction in delays in issuing permit coverages. Cost of complying with new rules as a whole.	 Minimal, if any Minimal, if any	Impactful Impactful
C. Businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking			
Entities operating under current general permits	Clarification and correction of errors and reduction in time spent going back and forth with the implementing agency on the meaning of a particular rule. Reduction in delays in issuing permit coverages. Cost of complying with new rules as a whole.	 Minimal, if any None	Impactful Impactful
Entities applying for new or modified coverage under general permits	Clarification and correction of errors and reduction in time spent going back and forth with the implementing agency on the meaning of a particular rule. Reduction in delays in issuing permit coverages.	 Minimal, if any	Impactful Impactful

Description of Affected Groups	Description of Effect	Cost Increase/Decreased Revenue	Benefit /Decreased Cost/Increased Revenue
	Cost of complying with new rules as a whole.	Minimal	
C. Other stakeholders directly affected by the rulemaking			
Land and building owners served by OWTFs	Cost of complying with new rules as a whole.	Minimal, if any	
General Public	Economic and social benefits of clean water.	Minimal, if any	Impactful

Part II - Additional detail to explain impacts listed above, as necessary

Regarding the probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking, no additional information is necessary. None of the rule changes should have a particularly impactful effect on delegated agencies of political subdivisions. Some of the changes solidify already established Departmental interpretations of the current rule language, and the changes made here are merely clarifications.

Regarding businesses in the on-site industry, and land and building owners served by OWTFs, the following are specific rule changes that may most directly entail potential costs or benefits.

All impacts described are anticipated to be no more than minimal.

NOI Pretreatment report - A309(B)(6)

Currently, no pretreatment report is automatically required in all cases, but proposed pretreatment is still reviewed to ensure the pretreatment produces "typical sewage" so that a facility qualifies for permit coverage under a general permit. A pretreatment report ensures this review occurs in as little time as possible. This rule change simply provides clearer notice of the need for pretreatment details. ADEQ believes requiring a pretreatment report is minimally burdensome, is necessary to verify that the proposed pretreatment is appropriate for use with the chosen OWTF technology, and that the ultimate treated water will meet applicable performance standards. This should not be a costly or grossly time consuming addition at all, and will save time and money on subsequent discussions between the designer and the regulating agency.

NOI Drainage and erosion information - A309(B)(2)(b)(iv) & A309(B)(6)(a)(v)

Erosion or saturated soil can adversely affect a OWTF's treatment effectiveness. ADEQ anticipates that most designers are already reviewing drainage information to ensure appropriate placement and that a designer should usually be able to comply with this requirement easily with very little cost, especially balanced with the benefit of ensuring an OWTF's treatment is effective. OWTFs adversely affected by drainage are unable to operate properly as the soil is unable to properly filter, treat, and

convey wastewater away from the dispersal site. In cases where further technical evaluation is necessary, it would be necessary for approval of coverage with or without this rule change. This rule change simply provides clearer notice. This is an aspect of the system that permit reviewers already consider when evaluating the appropriateness of coverage for the proposed system and ensuring that the applicant ensures that the OWTF is located and designed using "good design judgment" according to A.A.C. R18-9-A312(A)(1). Therefore, providing this information at the start of the process will help to save the permittee time in receiving a Construction Authorization.

RFDA/COC clarifications – A309(C)(1) & A309(C)(2)

This change is important to ensure clarity and consistency across all delegated agencies. ADEQ has never interpreted this rule to mean that a county representative could sign off on construction on correctness of installation on behalf of the owner. *It would be a conflict of interest for* a representative from an entity regulating the applicant, such as a delegated county's inspector, to act as an agent on behalf of the applicant as this would disrupt the regulatory thread back to the applicant. This rule clarification may disrupt current processes for one or more delegated entities but will maintain clarity and certainty regarding the responsible party in the instance that any compliance action is necessary, likely saving legal fees and protecting the environment. Further, the Director has already expressed this interpretation of the current rule with these agencies and in a substantive policy: *Appropriate Signatories for Certifications in A.A.C. R18-9-A309(C)(1)(b) and A.A.C. R18-9-A309(C)(2)(f)*; Policy No. 3004.2021 (effective Feb. 7, 2022), https://static.azdeq.gov/legal/subs_wqpermits_signatories.pdf.

100-year flood zone qualification for subsurface limiting conditions - A310(C)(2)(d)

This change should save time and money. Right now, it is assumed that a surface limiting condition exists if *any portion* of a 100-year flood hazard zone is located on the property on which the OWTF is installed. A property could be quite large. Therefore, a site investigator should further be able to inspect whether the flood zone is near the OWTF and may adversely affect the ability of the facility to function properly before it's designated a surface limiting condition. This will prevent unnecessarily required improved treatment at the site.

Require an applicant to use the most conservative SAR - R18-9-A312(D)(2)("c")

At this time, the rule does not specify how to apply the table in A.A.C. R18-9-A312(D)(2)(a) when an applicant's percolation rate determined under A.A.C. R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in the table. ADEQ has evaluated the silence in the rule and at this time has concluded that if the percolation rate determined under A.A.C. R18-9-A310(F) or (G), whichever is applicable, is a value that lies between two consecutive percolation rate values listed in subsection (2)(a) above, the applicant must use the higher of the two listed percolation rates to correlate to the most conservative SAR.

ADEQ has thoroughly evaluated other options, such as interpolation, but has concluded, in part based

on comments during the drafting phase, that ADEQ does not have enough additional soil data to conclude that intermediary interpolated numbers are scientifically appropriate. Even if ADEQ concluded it could be scientifically appropriate to interpolate based on data from soil types or statewide testing data, the process to ensure that SAR values are calculated precisely and accurately enough to allow for an interpolated SAR would be overly burdensome and the precise and accurate inputs unmeasurable. Significant figures would need to be used in measurement and calculation for accuracy and preciseness.

Currently, percolation rates are listed in terms of three significant figures according to the rule table in A.A.C. R18-9-A312(D)(2)(a). If following significant figures here, to interpolate a soil absorption rate properly, a percolation rate would need to be measured to three significant figures for precision. However, the rule is not consistent in its use of significant figures. Also, in the field, one would need to measure the percolation rate to one hundredth of a minute, i.e., 0.6 seconds, for a soil absorption rate to be precise enough to be scientifically defensible. This level of rigor of measurement is not currently being done in the field, nor has it been expected in the past. Someone could not measure accurately to one hundredth of a minute in the field without somewhat costly technology. At this time, stakeholders have expressed that the technology required is an unreasonable option, and some have also expressed that regardless, percolation testing itself is not accurate enough to allow for interpolation. Therefore, given the controversy of the subject at this time, using the most conservative value is the most practical and efficient method to identify the percolation and soil absorption rates. This will keep field instrumentation costs to a minimum and is necessary to protect the environment by ensuring a drainage area is sized appropriately for the volume of wastewater.

Hydraulic analysis - R18-9-A312(E)(3)(c)

Requiring a hydraulic analysis for every design, regardless of the soil absorption rate, ensures that designs are adequate for a particular site and soil composition at the site. It is important to make sure that soil can adequately carry wastewater away from the site, and that soil treats microorganisms before conveyance to groundwater and that unfiltered wastewater does not surface. A hydraulic analysis is relatively simple, especially where a subsurface limiting condition is less than four feet below the bottom of the disposal works, as is the case in A.A.C. R18-9-A312(E)(3)(c) and should present a minimum necessary burden to ensure that wastewater is adequately treated and conveyed away from the disposal site.

Electrical code requirements - A312(F)(3)("a")

Pursuant to this rulemaking, permit coverage applicants must meet the applicable county electrical standard for connections between electrical components in an on-site system to ameliorate risks of fire and electrocution from installation of electrical components and ensure continued proper operation of the on-site system. It is likely these codes are already applied in the respective counties, but this rule change solidifies the authority to ensure that facilities are installed correctly to minimally protect

health, safety, and continued system operation. This rule change may have a minimal impact on installation costs, but a more than minimal impact is not anticipated.

Alternative setbacks for conventional systems and 4.23 permitted facilities - A312(G)(7)

This rule change would more clearly allow applicants to make greater use of the land they own by allowing decreased setbacks for simple conventional systems, as well as alternatives, if appropriate. However, this is merely an example of one of many "clarifications" of existing rule language in this rulemaking. These "clarifications," as identified in the rulemaking preamble section-by-section description tables, will save both applicants and regulators time and money in attempting to agree on the meaning of specific rules.

Julian dating – Septic Tank - A314(1)(l)

ADEQ is adding the option to allow installation of septic tanks marked with a Julian date, which is the number of days since January 1, 4713 B.C.E., instead of a Gregorian date, such as February 18, 2022. This will allow more tank manufacturers to sell otherwise appropriate tanks in Arizona and will also allow applicants to expand their choice of tank to the best or most economical option available. In sum, this will not impose additional economic burden, but rather has the potential for economic benefit to homeowners and business owners.

Septic tank standard updates (allowing thermoplastic) - A314(2)(c) & (2)(d)

The septic tank standard modification that allows thermoplastic tanks simply provides additional options of appropriate useable septic tanks. This potentially economically benefits manufacturers, business owners, and allows applicants to expand their choice of tank to the best or most economical option available while equally protecting the environment.

Pressurization panel and alarm - E304(D)(2)(d)(iii)

This change involves a change in how pressure distribution system alarms operate, ensuring that visual alarms are installed more safely. This rule change also makes it clear that audible alarms now are required inside the structure served in addition to visual alarms. The addition of an audible alarm is not anticipated to create even a minimal burden on designers or homeowners.

Vault and haul – E314(C)

Soil investigations may be costly in some cases. Pursuant to R18-9-E314(A)(1), at some locations the reason to install a vault and haul system is due to operational constraints, and not the soil quality at the site itself. Therefore, if the reason for the operational constraint would exist regardless of the results of the site investigation, the site investigation would be an unnecessary burden and a waste of money. Therefore, in the few cases to which this would apply, this technical update could save the applicant money in applying for permit coverage.

E. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rule making.

ADEQ estimates this rulemaking will not have an impact on public or private employment.

F. A statement of the probable impact of the rulemaking on small businesses.

Pursuant to A.R.S. § 41-1055(B)(5), ADEQ must discuss items *(1)* through *(4)* below to address the probable impacts of this rulemaking on small businesses.

Note that by statutory definition, "small business," is a "concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations." A.R.S. § 41-1001.

(1) An identification of the small businesses subject to the rulemaking.

- On-site applicants for on-sites owned by small business property owners (e.g., law office), and
- On-site facility professionals, including:
  - Designers, including engineers,
  - Site investigators or drillers for site investigations.
  - Installers,
  - Maintenance professionals,
  - Septage pumpers and haulers, and
  - Notice of Transfer inspectors.

(2) The administrative and other costs required for compliance with the rule making.

Small businesses may need to make some modifications to their design processes or records to comply with the rule changes, but costs to do so should be minimal.

(3) Addressing the following methods prescribed in A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses:

(a) Establishing less stringent compliance or reporting requirements in the rule for small businesses.

The rule changes in this rulemaking are as minimal as possible to protect public health and the environment.

(b) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

The rule changes in this rulemaking are as minimal as possible to protect public health and the environment. Schedules and deadlines are not impacted.

(c) Consolidating or simplifying the rule's compliance or reporting requirements for small businesses.

This rulemaking is not a significant rulemaking and changes made are intentionally minimal to have the minimum substantive and procedural impact on all those persons and businesses regulated under the on-site program. Compliance and reporting requirements for small businesses are already as minimal as possible under the current rule framework.

(d) Establish performance standards for small businesses to replace design or operational standards in the rule.

This rulemaking does not modify the framework of the on-site program, which is mostly based in design standards. However, there are plans to modify the program in a future rulemaking and move towards a more performance standards-based program.

(e) Exempting small businesses from any or all requirements of the rule making.

OWTFs are generally owned, operated, maintained, designed, inspected for sale, and installed by either small businesses or individual homeowners. It is crucial to the integrity of the program that small businesses are subject to these rules in order to protect health and the environment.

(4) The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking, as part of the discussion of impact of the rulemaking on small businesses pursuant to A.R.S. § 41-1055(B)(5)(d).

The probable costs and benefits to private persons and consumers, including those related to small businesses, is described above. All anticipated costs and benefits should be minimal, if any. This rulemaking is not intended to be significantly substantive. Some changes that appear substantive are actually merely clarifications of existing rule, except as described in the economic statement above.

G. A statement of the probable effect on state revenues.

This rulemaking should not result in a significant impact in state revenues.

H. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

This rulemaking is the least intrusive and costly means possible to achieve the same objectives.

I. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

Any data or reasoning upon which this rulemaking is based is identified in Tables 1 through 11 in the "Section by Section Explanation of Changes in this Rulemaking" portion of this preamble located in Part 6. Generally, no new data was introduced or reviewed to make these rule changes.

INFILTRATOR®
water technologies

October 11, 2022

Matthew Ivers
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Re: R18-9 Rulemaking Comments

Dear Mr. Ivers,

In regard to the proposed revisions to Arizona's rules governing onsite wastewater systems, Infiltrator Water Technologies (Infiltrator) supports the proposed amendments to R18-9 A314(2)(c) and (2)(d) pertaining to the standards for septic tanks. The proposed changes will align Arizona's onsite wastewater system rules with the types of tank materials being offered nationally and described in North American prefabricated septic tank standards. The amendments will also provide references to current-day manufacturing standards.

Please note that consensus standards published by ASTM International and the International Association of Plumbing and Mechanical Officials (IAPMO) are updated and republished on regular cycles, meaning that when republication occurs with a new date associated with the title of the standard, the standard reference in the rules becomes obsolete. When a new standard is published, the former standard is no longer in existence and typically cannot be purchased from the publisher of the standard. To avoid this situation, states sometimes remove the date suffix from the title of the standard and follow the title with "as amended". An example for the IAPMO/ANSI Z1000-2019 tank standard would be "IAPMO/ANSI Z1000, as amended". With this change, when IAPMO/ANSI Z1000 is republished in 2024 on its 5-year update cycle, the rules will continue to reflect the most current version.

The new section R18-9-A311(A)(4) could be interpretated that septic tanks are required to be installed any time an alternate technology listed in R18-9-E303 through R18-9-E323 is specified in a design. Products certified under NSF/ANSI 40 or 245 are tested using a specified treatment configuration; most include a pretreatment tank or chamber that provides the same liquid-solids separation function as a septic tank. The additional volume of the septic tank beyond what was tested during certification has the unintended potential to negatively impact the function and performance of the system and may result in the system being non-compliant with the NSF/ANSI 40 or 245 certification. Please consider revising the first sentence of this section to read:

> If either a septic tank or disposal method, or both, as identified in R18-9-E302, is appropriately used in combination with an alternative technology listed under R18-9-E303 through R18-9-E322 when a septic/pretreatment tank or chamber is not specified in the NSF/ANSI, or other certification, configuration,

An editorial comment pertains to the text in R18-9-A309 (12), which states: "12. To obtain coverage under a Type 4 General Permit, and applicant must, in the following order:". In this line, "and applicant" should be changed to "an applicant".

Thank you very much for your consideration of these comments. Please contact me at (860) 575-8099 if any further information is required.

Sincerely,

David Lentz

David Lentz, P.E.
Regulatory Director
Licensure/PE: CT, IL, NC, NY

cc: Heidi Welborn, Arizona Department of Environmental Protection
Sheryl Ervin, P.G., Infiltrator Water Technologies
Trevor Gillespie, Infiltrator Water Technologies

RE: FW: Notice of Proposed Rulemaking for Update to On-site Wastewater Treatment Facilities Rules

1 message

Dave Bartholomew <dave@bwsinconline.com> Wed, Sep 21, 2022 at 3:48 PM
To: Matt Ivers <ivers.matthew@azdeq.gov>
Cc: "magic4766566@yahoo.com" <magic4766566@yahoo.com>, "alfredo@machocontracting.com" <alfredo@machocontracting.com>, "dlentz@infiltratorwater.com" <dlentz@infiltratorwater.com>, "colin.bishop@anuainternational.com" <colin.bishop@anuainternational.com>, "azowraloub@gmail.com" <azowraloub@gmail.com>, "peterson.luke@azdeq.gov" <peterson.luke@azdeq.gov>, "mschaefer@orenco.com" <mschaefer@orenco.com>, "jhuchel@flagstaffaz.gov" <jhuchel@flagstaffaz.gov>, "fleetwoodengineering@gmail.com" <fleetwoodengineering@gmail.com>, "kmills@millseng.com" <kmills@millseng.com>, "mstidham@eztreat.net" <mstidham@eztreat.net>, "kumarasamy.karthik@azdeq.gov" <kumarasamy.karthik@azdeq.gov>, "joellew86004@msn.com" <joellew86004@msn.com>, "j.vitale@cox.net" <j.vitale@cox.net>, "servin@infiltratorwater.com" <servin@infiltratorwater.com>, "price@tangentcompany.com" <price@tangentcompany.com>, "jacob@aamericanseptic.com" <jacob@aamericanseptic.com>, "rezabek.jon@azdeq.gov" <rezabek.jon@azdeq.gov>, "septicservices@ymail.com" <septicservices@ymail.com>, Catlow Shipek <catlow@watershedmg.org>, "prescottenvironmental@gmail.com" <prescottenvironmental@gmail.com>, "tanya@prioritypumpingaz.com" <tanya@prioritypumpingaz.com>, "susan@azmhca.com" <susan@azmhca.com>, "thomas.hanson@maricopa.gov" <thomas.hanson@maricopa.gov>, "basicdrilling@yahoo.com" <basicdrilling@yahoo.com>, "barcej@mohave.gov" <barcej@mohave.gov>, "bryancj1@aol.com" <bryancj1@aol.com>, "nnoble@orenco.com" <nnoble@orenco.com>, "msundberg@microseptec.com" <msundberg@microseptec.com>, "kittfp@arizona.edu" <kittfp@arizona.edu>, "brian.knisley@maricopa.gov" <brian.knisley@maricopa.gov>, "pamela@pedrilling.com" <pamela@pedrilling.com>, "baggiore.trevor@azdeq.gov" <baggiore.trevor@azdeq.gov>, "paul@pfmiller.com" <paul@pfmiller.com>, "dmonihan@coconino.az.gov" <dmonihan@coconino.az.gov>, "ksherman@septitech.com" <ksherman@septitech.com>, "akendrick@gilacountyaz.gov" <akendrick@gilacountyaz.gov>, "lopez.linneth@azdeq.gov" <lopez.linneth@azdeq.gov>, "jgarrett@gilacountyaz.gov" <jgarrett@gilacountyaz.gov>, "frederick.tack@ghd.com" <frederick.tack@ghd.com>, "morgan.raymond@azdeq.gov" <morgan.raymond@azdeq.gov>, "jonheidrich@gmail.com" <jonheidrich@gmail.com>, "freddieveng@gmail.com" <freddieveng@gmail.com>, "savarirayan.naveen@azdeq.gov" <savarirayan.naveen@azdeq.gov>, "hmh240@gmail.com" <hmh240@gmail.com>, "azsepticpros@gmail.com" <azsepticpros@gmail.com>, "firstamericanseptic@gmail.com" <firstamericanseptic@gmail.com>, "oconnor.morgan@azdeq.gov" <oconnor.morgan@azdeq.gov>, "jaimee@pedrilling.com" <jaimee@pedrilling.com>, "woods.chloe@azdeq.gov" <woods.chloe@azdeq.gov>, "toopal.latha@azdeq.gov" <toopal.latha@azdeq.gov>, "george.amaya@yumacountyaz.gov" <george.amaya@yumacountyaz.gov>, "glawson@graham.az.gov" <glawson@graham.az.gov>, "john.osgood@navajocountyaz.gov" <john.osgood@navajocountyaz.gov>, "mikemadrid@co.apache.az.us" <mikemadrid@co.apache.az.us>, "darcy.kober@maricopa.gov" <darcy.kober@maricopa.gov>, "jennifer.lynch@pima.gov" <jennifer.lynch@pima.gov>, "mmcgee@cochise.az.gov" <mmcgee@cochise.az.gov>, "thoogerwerf@lapazcountyaz.org" <thoogerwerf@lapazcountyaz.org>, "dcapotosti@lapazcountyaz.org" <dcapotosti@lapazcountyaz.org>, "srutherford@co.greenlee.az.us" <srutherford@co.greenlee.az.us>, "christopher.reimus@pinal.gov" <christopher.reimus@pinal.gov>, "jstjohn@santacruzcountyaz.gov" <jstjohn@santacruzcountyaz.gov>, "eric.matson@maricopa.gov" <eric.matson@maricopa.gov>, "suzanne.ehrlich@yavapaiaz.gov" <suzanne.ehrlich@yavapaiaz.gov>, Heidi Welborn <welborn.heidi@azdeq.gov>

Matt,

Thank you for the clarification. I had a feeling it would turn out to be something benign and sensible. I will be at the meeting, nonetheless.

Sincerely,

David R. Bartholomew
President – Environmental Health Specialist
BARTHOLOMEW

WATER SERVICES, Inc.
PROTECTION for PEOPLE and the PLANET

ADEQ Operator #011455

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Salvarent eos de sordibus suis

From: Matt Ivers <ivers.matthew@azdeq.gov>
Sent: Wednesday, September 21, 2022 3:40 PM
To: Dave Bartholomew <dave@bwsinconline.com>
Cc: magic4766566@yahoo.com; alfredo@machocontracting.com; dlentz@infiltratorwater.com; colin.bishop@anuainternational.com; azowraloub@gmail.com; peterson.luke@azdeq.gov; mschaefer@orenco.com; jhuchel@flagstaffaz.gov; fleetwoodengineering@gmail.com; kmills@millseng.com; mstidham@eztreat.net; kumarasamy.karthik@azdeq.gov; joellew86004@msn.com; j.vitale@cox.net; servin@infiltratorwater.com; price@tangentcompany.com; jacob@aamericanseptic.com; rezabek.jon@azdeq.gov; septicservices@ymail.com; Catlow Shipek <catlow@watershedmg.org>; prescottenvironmental@gmail.com; tanya@prioritypumpingaz.com; susan@azmhca.com; thomas.hanson@maricopa.gov; basicdrilling@yahoo.com; barcej@mohave.gov; bryancj1@aol.com; nnoble@orenco.com; msundberg@microseptec.com; kittfp@arizona.edu; brian.knisley@maricopa.gov; pamela@pedrilling.com; baggiore.trevor@azdeq.gov; paul@pfmiller.com; dmonihan@coconino.az.gov; ksherman@septitech.com; akendrick@gilacountyaz.gov; lopez.linneth@azdeq.gov; jgarrett@gilacountyaz.gov; frederick.tack@ghd.com; morgan.raymond@azdeq.gov; jonheidrich@gmail.com; freddieveng@gmail.com; savarirayan.naveen@azdeq.gov; hmh240@gmail.com; azsepticpros@gmail.com; firstamericanseptic@gmail.com; oconnor.morgan@azdeq.gov; jaimee@pedrilling.com; woods.chloe@azdeq.gov; toopal.latha@azdeq.gov; george.amaya@yumacountyaz.gov; glawson@graham.az.gov; john.osgood@navajocountyaz.gov; mikemadrid@co.apache.az.us; darcy.kober@maricopa.gov; jennifer.lynch@pima.gov; mmcgee@cochise.az.gov; thoogerwerf@lapazcountyaz.org; dcapotosti@lapazcountyaz.org; srutherford@co.greenlee.az.us; christopher.reimus@pinal.gov; jstjohn@santacruzcountyaz.gov; eric.matson@maricopa.gov; suzanne.ehrlich@yavapaiaz.gov; Heidi Welborn <welborn.heidi@azdeq.gov>
Subject: Re: FW: Notice of Proposed Rulemaking for Update to On-site Wastewater Treatment Facilities Rules

David and Colleagues,

Thank you for your email. ADEQ appreciates the concern and interest with regards to changes to the "Onsite Rules" as proposed in the Notice of Proposed Rulemaking (NPRM). R18-9-A308 seems to limit ADEQ enforcement authority and is not consistent with the Agency's statutory authority. The rulemaking does not remove ADEQ enforcement authority, but rather clarifies that the agency has more enforcement authority than R18-9-A308 implies. At the same time, ADEQ is looking to amend R18-9-110 to remove reference to R18-9-A308. ADEQ proposes to rely on the remaining language of R18-9-110 for enforcement authority going forward because it contains the same authority as statute provides.

A full explanation is provided in the NPRM preamble within *Table 2 Explanation of Changes* which states: "Programmatic Implementation an explanation of changes is provided. It states: A.A.C. R18-9-110 and R18-9-A308 invalidly limit statutory enforcement discretion for an entire class of facilities, namely OWTFs. Rather, OWTFs are subject to enforcement under all applicable provisions of A.R.S. Title 49, Chapter 2, Article 4. Therefore, ADEQ is repealing A.A.C. R18-9- A308 and modifying A.A.C. R18-9-110 to reflect proper application of enforcement statutes. Note that other statutory provisions are also applicable to facilities, including those for environmental nuisances under A.R.S. Title 49, Chapter 1, Article 3."

ADEQ has also checked the email link to provide comments and believes that it is functioning properly. Please forward any further concerns regarding this matter directly to me.

Thanks,

Matt Ivers
ADEQ Groundwater Protection General Permits and Reuse Manager

Cell: 480-612-5686

azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

On Wed, Sep 21, 2022 at 1:23 PM Dave Bartholomew <dave@bwsinconline.com> wrote:

> My colleagues,
>
> Many of you may not have seen this notice. ADEQ intends to repeal R18-9-A308, which would end the enforcement of on-site permit violations. I really hope I am in error, but that's what it looks like. Also the email address to send commentary to ADEQ is inactive, which is not helping anything. To this end, I will be sending my commentary to the group, in hopes that it will reach the correct parties involved.
>
> Thank you and see notice Below:
>
> Sincerely,
>
> 
>
> David R. Bartholomew
> President – Environmental Health Specialist
> **BARTHOLOMEW**
>
> **WATER SERVICES, Inc.**
> *PROTECTION for PEOPLE and the PLANET*
>
> ADEQ Operator #011455
>
> cell. (602) 692-7648
> email. dave@bwsinconline.com
> www.bwsinconline.com
>
> Please LIKE us on
>
> Facebook

Salvarent eos de sordibus suis

ADEQ Arizona Department of Environmental Quality

Notice of Proposed Rulemaking: Update to On-site Wastewater Treatment Facilities Rules

Thank you to the On-site Wastewater Advisory Committee and all of the stakeholders who helped us complete technical updates to the existing on-site rules in Arizona Administrative Code (AAC), Title 18, Chapter 9. The purpose of this update is to address needed technical corrections to the existing rules while we continue to collaborate with stakeholders on more significant changes needed to modernize the on-site permit program and protect the environment and public health.

The Notice of Proposed Rulemaking (NPRM) was filed with the Secretary of State on August 11, 2022, and has been published in the Arizona Administrative Register. The NPRM is located on the ADEQ website. The formal comment period has begun and **comments must be received by October 13, 2022**. Written comments must be sent to the contact information identified in Section 9 of the NPRM. Emailed comments must be sent to: onsitewastewater@azdeq.gov.

Public Hearing
Date: Oct. 13, 2022
Time: 1 p.m.
Location: ADEQ, 1110 W Washington, Room 3175
Phoenix, Arizona

Register to attend >

After you register you will receive an email with the link to the hearing.

We appreciate your engagement and time and we are excited to work with you in the future to further improve the on-site program and rules.

About ADEQ

Under the Environmental Quality Act of 1986, the Arizona State Legislature established the Arizona Department of Environmental Quality in 1987 as the state agency for protecting and enhancing public health and the environment of Arizona. For more information, visit azdeq.gov.

ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write or understand English and/or to those with disabilities. Requests for language translation, ASL interpretation, CART captioning

services or disability accommodations must be made at least 48 hours in advance by contacting the Title VI Nondiscrimination Coordinator, Leonard Drago, at 602-771-2288 or Drago.Leonard@azdeq.gov. For a TTY or other device, Telecommunications Relay Services are available by calling 711.

ADEQ tomará las medidas razonables para proveer acceso a los servicios del departamento a personas con capacidad limitada para hablar, escribir o entender inglés y/o para personas con discapacidades. Las solicitudes de servicios de traducción de idiomas, interpretación ASL (lengua de signos americano), subtitulado de CART, o adaptaciones por discapacidad deben realizarse con al menos 48 horas de anticipación comunicándose con el Coordinador de Anti-Discriminación del Título VI, Leonard Drago, al 602-771-2288 o Drago.Leonard@azdeq.gov. Para un TTY u otro dispositivo, los servicios de retransmisión de telecomunicaciones están disponible llamando al 711.

ADEQ Arizona Department of Environmental Quality

QUESTIONS?
Contact Us

STAY CONNECTED:

Gmail

Heidi Welborn (Contractor) <welborn.heidi@azdeq.gov>

Fwd: Potable water

1 message

Onsite Wastewater - AZDEQ <onsitewastewater@azdeq.gov> Wed, Oct 12, 2022 at 4:32 PM
To: "Heidi Welborn (Contractor)" <welborn.heidi@azdeq.gov>

---------- Forwarded message ---------
From: **Faith Burger** <burgerfaith4@gmail.com>
Date: Tue, Sep 27, 2022 at 12:49 PM
Subject: Potable water
To: <onsitewastewater@azdeq.gov>

I do not want waste water used for drinking water. Faith Burger 602 330 3750

Gmail Heidi Welborn (Contractor) <welborn.heidi@azdeq.gov>

RE: FW: Notice of Proposed Rulemaking for Update to On-site Wastewater Treatment Facilities Rules

1 message

Monihan, David <dmonihan@coconino.az.gov> Thu, Sep 22, 2022 at 2:54 PM
To: JENNY VITALE <j.vitale@cox.net>, Matt Ivers <ivers.matthew@azdeq.gov>, Dave Bartholomew <dave@bwsinconline.com>
Cc: "magic4766566@yahoo.com" <magic4766566@yahoo.com>, "alfredo@machocontracting.com" <alfredo@machocontracting.com>, "dlentz@infiltratorwater.com" <dlentz@infiltratorwater.com>, "colin.bishop@anuainternational.com" <colin.bishop@anuainternational.com>, "azowraloub@gmail.com" <azowraloub@gmail.com>, "peterson.luke@azdeq.gov" <peterson.luke@azdeq.gov>, "mschaefer@orenco.com" <mschaefer@orenco.com>, "jhuchel@flagstaffaz.gov" <jhuchel@flagstaffaz.gov>, "fleetwoodengineering@gmail.com" <fleetwoodengineering@gmail.com>, "kmills@millseng.com" <kmills@millseng.com>, "mstidham@eztreat.net" <mstidham@eztreat.net>, "kumarasamy.karthik@azdeq.gov" <kumarasamy.karthik@azdeq.gov>, "Wirth, Joelle" <joellew86004@msn.com>, "servin@infiltratorwater.com" <servin@infiltratorwater.com>, "price@tangentcompany.com" <price@tangentcompany.com>, "jacob@aamericanseptic.com" <jacob@aamericanseptic.com>, "rezabek.jon@azdeq.gov" <rezabek.jon@azdeq.gov>, "septicservices@ymail.com" <septicservices@ymail.com>, Catlow Shipek <catlow@watershedmg.org>, "prescottenvironmental@gmail.com" <prescottenvironmental@gmail.com>, "tanya@prioritypumpingaz.com" <tanya@prioritypumpingaz.com>, "susan@azmhca.com" <susan@azmhca.com>, "thomas.hanson@maricopa.gov" <thomas.hanson@maricopa.gov>, "basicdrilling@yahoo.com" <basicdrilling@yahoo.com>, "barcej@mohave.gov" <barcej@mohave.gov>, "bryancj1@aol.com" <bryancj1@aol.com>, "nnoble@orenco.com" <nnoble@orenco.com>, "msundberg@microseptec.com" <msundberg@microseptec.com>, "kittfp@arizona.edu" <kittfp@arizona.edu>, "brian.knisley@maricopa.gov" <brian.knisley@maricopa.gov>, "pamela@pedrilling.com" <pamela@pedrilling.com>, "baggiore.trevor@azdeq.gov" <baggiore.trevor@azdeq.gov>, "paul@pfmiller.com" <paul@pfmiller.com>, "ksherman@septitech.com" <ksherman@septitech.com>, "akendrick@gilacountyaz.gov" <akendrick@gilacountyaz.gov>, "lopez.linneth@azdeq.gov" <lopez.linneth@azdeq.gov>, "jgarrett@gilacountyaz.gov" <jgarrett@gilacountyaz.gov>, "frederick.tack@ghd.com" <frederick.tack@ghd.com>, "morgan.raymond@azdeq.gov" <morgan.raymond@azdeq.gov>, "jonheidrich@gmail.com" <jonheidrich@gmail.com>, "freddieveng@gmail.com" <freddieveng@gmail.com>, "savarirayan.naveen@azdeq.gov" <savarirayan.naveen@azdeq.gov>, "hmh240@gmail.com" <hmh240@gmail.com>, "azsepticpros@gmail.com" <azsepticpros@gmail.com>, "firstamericanseptic@gmail.com" <firstamericanseptic@gmail.com>, "oconnor.morgan@azdeq.gov" <oconnor.morgan@azdeq.gov>, "jaimee@pedrilling.com" <jaimee@pedrilling.com>, "woods.chloe@azdeq.gov" <woods.chloe@azdeq.gov>, "toopal.latha@azdeq.gov" <toopal.latha@azdeq.gov>, "george.amaya@yumacountyaz.gov" <george.amaya@yumacountyaz.gov>, "glawson@graham.az.gov" <glawson@graham.az.gov>, "john.osgood@navajocountyaz.gov" <john.osgood@navajocountyaz.gov>, "mikemadrid@co.apache.az.us" <mikemadrid@co.apache.az.us>, "darcy.kober@maricopa.gov" <darcy.kober@maricopa.gov>, "jennifer.lynch@pima.gov" <jennifer.lynch@pima.gov>, "mmcgee@cochise.az.gov" <mmcgee@cochise.az.gov>, "thoogerwerf@lapazcountyaz.org" <thoogerwerf@lapazcountyaz.org>, Dawn Capotosti <dcapotosti@lapazcountyaz.org>, "srutherford@co.greenlee.az.us" <srutherford@co.greenlee.az.us>, "christopher.reimus@pinal.gov" <christopher.reimus@pinal.gov>, "jstjohn@santacruzcountyaz.gov" <jstjohn@santacruzcountyaz.gov>, "eric.matson@maricopa.gov" <eric.matson@maricopa.gov>, "suzanne.ehrlich@yavapaiaz.gov" <suzanne.ehrlich@yavapaiaz.gov>, Heidi Welborn <welborn.heidi@azdeq.gov>

Jenny,

Whatever.

I have as much a right to voice my opinion as you do.

David

Please consider the environment before printing this e-mail.

David M. Monihan Jr., PE, RLS
Environmental Engineer
Coconino County Community Development
COCONINO COUNTY ARIZONA 2500 North Fort Valley Road, Building 1
Flagstaff, AZ 86001
(928) 679-8772

http://www.coconino.az.gov/136/Community-Development

From: JENNY VITALE <j.vitale@cox.net>
Sent: Thursday, September 22, 2022 2:41 PM
To: Monihan, David <dmonihan@coconino.az.gov>; Matt Ivers <ivers.matthew@azdeq.gov>; Dave Bartholomew <dave@bwsinconline.com>
Cc: magic4766566@yahoo.com; alfredo@machocontracting.com; dlentz@infiltratorwater.com; colin.bishop@anuainternational.com; azowraloub@gmail.com; peterson.luke@azdeq.gov; mschaefer@orenco.com; jhuchel@flagstaffaz.gov; fleetwoodengineering@gmail.com; kmills@millseng.com; mstidham@eztreat.net; kumarasamy.karthik@azdeq.gov; Wirth, Joelle <joellew86004@msn.com>; servin@infiltratorwater.com; price@tangentcompany.com; jacob@aamericanseptic.com; rezabek.jon@azdeq.gov; septicservices@ymail.com; Catlow Shipek <catlow@watershedmg.org>; prescottenvironmental@gmail.com; tanya@prioritypumpingaz.com; susan@azmhca.com; thomas.hanson@maricopa.gov; basicdrilling@yahoo.com; barcej@mohave.gov; bryancj1@aol.com; nnoble@orenco.com; msundberg@microseptec.com; kittfp@arizona.edu; brian.knisley@maricopa.gov; pamela@pedrilling.com; baggiore.trevor@azdeq.gov; paul@pfmiller.com; ksherman@septitech.com; akendrick@gilacountyaz.gov; lopez.linneth@azdeq.gov; jgarrett@gilacountyaz.gov; frederick.tack@ghd.com; morgan.raymond@azdeq.gov; jonheidrich@gmail.com; freddieveng@gmail.com; savarirayan.naveen@azdeq.gov; hmh240@gmail.com; azsepticpros@gmail.com; firstamericanseptic@gmail.com; oconnor.morgan@azdeq.gov; jaimee@pedrilling.com; woods.chloe@azdeq.gov; toopal.latha@azdeq.gov; george.amaya@yumacountyaz.gov; glawson@graham.az.gov; john.osgood@navajocountyaz.gov; mikemadrid@co.apache.az.us; darcy.kober@maricopa.gov; jennifer.lynch@pima.gov; mmcgee@cochise.az.gov; thoogerwerf@lapazcountyaz.org; Dawn Capotosti <dcapotosti@lapazcountyaz.org>; srutherford@co.greenlee.az.us; christopher.reimus@pinal.gov; jstjohn@santacruzcountyaz.gov; eric.matson@maricopa.gov;

suzanne.ehrlich@yavapaiaz.gov; Heidi Welborn <welborn.heidi@azdeq.gov>
Subject: RE: FW: Notice of Proposed Rulemaking for Update to On-site Wastewater Treatment Facilities Rules

[EXTERNAL EMAIL]
Use caution before clicking on links, opening attachments, or responding. DO NOT CLICK unless you recognize the sender and know the content is safe.

Dave,

It was never discussed, like a lot of changes ADEQ made to the Phase I. Stop being such a twit. Staff at ADEQ are adults and can defend themselves, they can be criticized and they can be held accountable. Your insufferable quest to "save them from Jenny" is just that, insufferable.

Jenny

> On September 22, 2022 at 4:37 PM "Monihan, David" <dmonihan@coconino.az.gov> wrote:
>
> Matt,
>
> The fact that the written document does not match someone's recollection of discussions is not proof of a lack of transparency.
>
> I am tired of endless discussions. Thanks for putting something out in writing.
>
> David
>
> Please consider the environment before printing this e-mail.
>
> David M. Monihan Jr., PE, RLS
> Environmental Engineer
> Coconino County Community Development
> COCONINO COUNTY ARIZONA 2500 North Fort Valley Road, Building 1
> Flagstaff, AZ 86001
> (928) 679-8772
>
> http://www.coconino.az.gov/136/Community-Development

From: JENNY VITALE <j.vitale@cox.net>
Sent: Thursday, September 22, 2022 10:50 AM
To: Matt Ivers <ivers.matthew@azdeq.gov>; Dave Bartholomew <dave@bwsinconline.com>
Cc: magic4766566@yahoo.com; alfredo@machocontracting.com; dlentz@infiltratorwater.com; colin.bishop@anuainternational.com; azowraloub@gmail.com; peterson.luke@azdeq.gov; mschaefer@orenco.com; jhuchel@flagstaffaz.gov; fleetwoodengineering@gmail.com; kmills@millseng.com; mstidham@eztreat.net; kumarasamy.karthik@azdeq.gov; Wirth, Joelle <joellew86004@msn.com>; servin@infiltratorwater.com; price@tangentcompany.com; jacob@aamericanseptic.com; rezabek.jon@azdeq.gov; septicservices@ymail.com; Catlow Shipek <catlow@watershedmg.org>; prescottenvironmental@gmail.com; tanya@prioritypumpingaz.com; susan@azmhca.com; thomas.hanson@maricopa.gov; basicdrilling@yahoo.com; barcej@mohave.gov; bryancj1@aol.com; nnoble@orenco.com; msundberg@microseptec.com; kittfp@arizona.edu; brian.knisley@maricopa.gov; pamela@pedrilling.com; baggiore.trevor@azdeq.gov; paul@pfmiller.com; Monihan, David <dmonihan@coconino.az.gov>; ksherman@septitech.com; akendrick@gilacountyaz.gov; lopez.linneth@azdeq.gov; jgarrett@gilacountyaz.gov; frederick.tack@ghd.com; morgan.raymond@azdeq.gov; jonheidrich@gmail.com; freddieveng@gmail.com; savarirayan.naveen@azdeq.gov; hmh240@gmail.com; azsepticpros@gmail.com; firstamericanseptic@gmail.com; oconnor.morgan@azdeq.gov; jaimee@pedrilling.com; woods.chloe@azdeq.gov; toopal.latha@azdeq.gov; george.amaya@yumacountyaz.gov; glawson@graham.az.gov; john.osgood@navajocountyaz.gov; mikemadrid@co.apache.az.us; darcy.kober@maricopa.gov; jennifer.lynch@pima.gov; mmcgee@cochise.az.gov; thoogerwerf@lapazcountyaz.org; Dawn Capotosti <dcapotosti@lapazcountyaz.org>; srutherford@co.greenlee.az.us; christopher.reimus@pinal.gov; jstjohn@santacruzcountyaz.gov; eric.matson@maricopa.gov; suzanne.ehrlich@yavapaiaz.gov; Heidi Welborn <welborn.heidi@azdeq.gov>
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[EXTERNAL EMAIL]
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Matt,

We all agree we want a better program, but I do not recall this change being discussed with stakeholders...ever.....we build a better program when there is proper transparency.

Jenny

> On September 22, 2022 at 11:46 AM Matt Ivers <ivers.matthew@azdeq.gov> wrote:
>
> Dave,

We appreciate and welcome all comments and concerns. All of us are interested in protecting and enhancing human health and the environment in Arizona. Everyone is encouraged to speak up if they have concerns or questions. That is how we build a better program together.

Thanks,

Matt Ivers
ADEQ Groundwater Protection General Permits and Reuse Manager

Cell: 480-612-5686

azdeq.gov

Your feedback matters to ADEQ. Visit azdeq.gov/feedback

On Wed, Sep 21, 2022 at 3:48 PM Dave Bartholomew <dave@bwsinconline.com> wrote:

> Matt,
>
> Thank you for the clarification. I had a feeling it would turn out to be something benign and sensible. I will be at the meeting, nonetheless.
>
> Sincerely,
>
> 
>
> David R. Bartholomew
> President – Environmental Health Specialist
> **BARTHOLOMEW**
>
> **WATER SERVICES, Inc.**
> *PROTECTION for PEOPLE and the PLANET*
>
> ADEQ Operator #011455
>
> cell. (602) 692-7648
> email. dave@bwsinconline.com
> www.bwsinconline.com
>
> Please LIKE us on
>
> Facebook
>
>
>
> *Salvarent eos de sordibus suis*

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Sent: Wednesday, September 21, 2022 3:40 PM
To: Dave Bartholomew <dave@bwsinconline.com>
Cc: magic4766566@yahoo.com; alfredo@machocontracting.com; dlentz@infiltratorwater.com; colin.bishop@anuainternational.com; azowraloub@gmail.com; peterson.luke@azdeq.gov; mschaefer@orenco.com; jhuchel@flagstaffaz.gov; fleetwoodengineering@gmail.com; kmills@millseng.com; mstidham@eztreat.net; kumarasamy.karthik@azdeq.gov; joellew86004@msn.com; j.vitale@cox.net; servin@infiltratorwater.com; price@tangentcompany.com; jacob@aamericanseptic.com; rezabek.jon@azdeq.gov; septicservices@ymail.com; Catlow Shipek <catlow@watershedmg.org>; prescottenvironmental@gmail.com; tanya@prioritypumpingaz.com; susan@azmhca.com; thomas.hanson@maricopa.gov; basicdrilling@yahoo.com; barcej@mohave.gov; bryancj1@aol.com; nnoble@orenco.com; msundberg@microseptec.com; kittfp@arizona.edu; brian.knisley@maricopa.gov; pamela@pedrilling.com; baggiore.trevor@azdeq.gov; paul@pfmiller.com; dmonihan@coconino.az.gov; ksherman@septitech.com; akendrick@gilacountyaz.gov; lopez.linneth@azdeq.gov; jgarrett@gilacountyaz.gov; frederick.tack@ghd.com; morgan.raymond@azdeq.gov; jonheidrich@gmail.com; freddieveng@gmail.com; savarirayan.naveen@azdeq.gov; hmh240@gmail.com; azsepticpros@gmail.com; firstamericanseptic@gmail.com; oconnor.morgan@azdeq.gov; jaimee@pedrilling.com; woods.chloe@azdeq.gov; toopal.latha@azdeq.gov; george.amaya@yumacountyaz.gov; glawson@graham.az.gov; john.osgood@navajocountyaz.gov; mikemadrid@co.apache.az.us; darcy.kober@maricopa.gov; jennifer.lynch@pima.gov; mmcgee@cochise.az.gov; thoogerwerf@lapazcountyaz.org; dcapotosti@lapazcountyaz.org; srutherford@co.greenlee.az.us; christopher.reimus@pinal.gov; jstjohn@santacruzcountyaz.gov; eric.matson@maricopa.gov; suzanne.ehrlich@yavapaiaz.gov; Heidi Welborn <welborn.heidi@azdeq.gov>
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Thanks,

Matt Ivers

ADEQ Groundwater Protection General Permits and Reuse Manager

Cell: 480-612-5686

azdeq.gov

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> My colleagues,
>
> Many of you may not have seen this notice. ADEQ intends to repeal R18-9-A308, which would end the enforcement of on-site permit violations. I really hope I am in error, but that's what it looks like. Also the email address to send commentary to ADEQ is inactive, which is not helping anything. To this end, I will be sending my commentary to the group, in hopes that it will reach the correct parties involved.
>
> Thank you and see notice Below:

Sincerely,

David R. Bartholomew
President – Environmental Health Specialist
BARTHOLOMEW

WATER SERVICES, Inc.
PROTECTION for PEOPLE and the PLANET

ADEQ Operator #011455

cell. (602) 692-7648
email. dave@bwsinconline.com
www.bwsinconline.com

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Facebook

Salvarent eos de sordibus suis

ADEQ Arizona Department of Environmental Quality

Notice of Proposed Rulemaking: Update to On-site Wastewater Treatment Facilities Rules

Thank you to the On-site Wastewater Advisory Committee and all of the stakeholders who helped us complete technical updates to the existing on-site rules in Arizona Administrative Code (AAC), Title 18, Chapter 9. The purpose of this update is to address needed technical corrections to the existing rules while we continue to collaborate with stakeholders on more significant changes needed to modernize the on-site permit program and protect the environment and public health.

The Notice of Proposed Rulemaking (NPRM) was filed with the Secretary of State on August 11, 2022, and has been published in the Arizona Administrative Register. The NPRM is located on the ADEQ website. The formal comment period has begun and **comments must be received by October 13, 2022**. Written comments must be sent to the contact information identified in Section 9 of the NPRM. Emailed comments must be sent to: onsitewastewater@azdeq.gov.

Public Hearing
Date: Oct. 13, 2022
Time: 1 p.m.
Location: ADEQ, 1110 W Washington, Room 3175
Phoenix, Arizona

Register to attend >

After you register you will receive an email with the link to the hearing.

We appreciate your engagement and time and we are excited to work with you in the future to further improve the on-site program and rules.

About ADEQ

Under the Environmental Quality Act of 1986, the Arizona State Legislature established the Arizona Department of Environmental Quality in 1987 as the state agency for protecting and enhancing public health and the environment of Arizona. For more information, visit azdeq.gov.

ADEQ will take reasonable measures to provide access to department services to individuals with limited ability to speak, write or understand English and/or to those with disabilities. Requests for language translation, ASL interpretation, CART captioning services or disability accommodations must be made at least 48 hours in advance by contacting the Title VI Nondiscrimination Coordinator, Leonard Drago, at 602-771-2288 or Drago.Leonard@azdeq.gov. For a TTY or other device, Telecommunications Relay Services are available by calling 711.

ADEQ tomará las medidas razonables para proveer acceso a los servicios del departamento a personas con capacidad limitada para hablar, escribir o entender inglés y/o para personas con discapacidades. Las solicitudes de servicios de traducción de idiomas, interpretación ASL (lengua de signos americano), subtitulado de CART, o adaptaciones por discapacidad deben realizarse con al menos 48 horas de anticipación comunicándose con el Coordinador de Anti-Discriminación del Título VI, Leonard Drago, al 602-771-2288 o Drago.Leonard@azdeq.gov. Para un TTY u otro dispositivo, los servicios de retransmisión de telecomunicaciones están disponible llamando al 711.

ADEQ Arizona Department of Environmental Quality

QUESTIONS?
Contact Us

STAY CONNECTED:

Gmail

Heidi Welborn (Contractor) <welborn.heidi@azdeq.gov>

R18-9 Rulemaking Comments by Infiltrator Water Technologies

1 message

Dave Lentz <dlentz@infiltratorwater.com> Tue, Oct 11, 2022 at 5:57 AM
To: Matt Ivers <ivers.matthew@azdeq.gov>, "onsitewastewater@azdeq.gov" <onsitewastewater@azdeq.gov>
Cc: "Heidi Welborn (Contractor)" <welborn.heidi@azdeq.gov>, Trevor Gillespie <TGillespie@infiltratorwater.com>, Sheryl Ervin <SErvin@infiltratorwater.com>

Hello Matt,

Please find attached comments on the R 18-9 Phase 1 rulemaking from Infiltrator Water Technologies. Can you please confirm receipt of the comments by responding to this email.

Sincerely,

Dave Lentz

INFILTRATOR water technologies

David Lentz, Professional Registration/PE – CT, IL, NC, NY
Regulatory Director
Phone: +1-860-577-7198 | **Mobile:** +1-860-575-8099 | **Fax:** +1-860-577-7793
4 Business Park Road Old Saybrook,Connecticut 06475

Website | Facebook | LinkedIn | You Tube | IWT Careers

AZ Phase 1 R18-9 rule revision comments by Infiltrator Water Technologies_Ivers_101122.pdf
56K

Fwd: R18-9-A309(5)(b)

1 message

Onsite Wastewater - AZDEQ <onsitewastewater@azdeq.gov> Fri, Oct 14, 2022 at 7:29 AM
To: "Heidi Welborn (Contractor)" <welborn.heidi@azdeq.gov>

---------- Forwarded message ---------
From: **Darron Anglin** <DAnglin@smcfd.org>
Date: Thu, Sep 8, 2022 at 12:12 PM
Subject: R18-9-A309(5)(b)
To: onsitewastewater@azdeq.gov <onsitewastewater@azdeq.gov>

I am submitting a comment on the On-site Wastewater Treatment Facilities Rules update. The section that talked about constructing or replacing treatment works of an onsite system in R18-9-A309(5). The words added to the introductory paragraph is helpful. The financial numbers and costs depicted in b have not been updated in some time and the construction costs do not reflect current market costs for connection.

Thank You,

Darron Anglin, P.E.

District Manager

Superstition Mountains Community Facilities District No. 1

5661 S Ironwood Drive

Apache Junction, AZ 85120

(480) 941-6760

(480) 671-3180 Fax

www.smcfd.org

Hearing comments for Onsite NPRM Public Hearing 10/13/2022

At least 40 people attended online

Lori zitov

Would the changes be applied to existing

How will the rules apply

How jurisdiction between ADEQ and the counties will play out? Will this usurp the county programs? Or will ADEQ step back from it if the counties have their own program? How will that played out?

Dave Bartholemew – echo jake garrett's sentiments, thank you to deq for getting this process rolling, hopefully between deq and owac we can keep working on streamlining these rules making this rules make sense and help them connect and just make a better program. Thank you for your herculean efforts so far and I look forward to the future of getting this up and running

Jake Garrett – thank you to you and Heidi and everyone who participated in this very professional hearing and want ot complement how you've conducted yourselves and length you've gone to to allow the public to make comments at this time

Written comments:

Dave Lentz for Infiltrator Water Technologies

Copy here:

Incorporation by reference

R18-9-A311(A)(4) – could be interpreted that septic tanks are required

No, "if."

Editorial comment – "an applicant"

Dave B.

ADEQ intends to repeal R18-9-A308, which would end the enforcement of on-site permit violations.

Per the email sent on Wednesday September 21, 2022…..ADEQ appreciates the concern and interest with regards to changes to the "Onsite Rules" as proposed inthe Notice of Proposed Rulemaking (NPRM).

R18-9-A308

seems to limit ADEQ enforcement authority and is not consistent with the Agency'sstatutory authority. The rulemaking does not remove ADEQ enforcement authority, but rather clarifies that the agency has more enforcementauthority than R18-9-A308 implies. At

the same time, ADEQ is looking to amend R18-9-110 to remove reference to R18-9-A308. ADEQ proposesto rely on the remaining language of R18-9-110 for enforcement authority going forward because it contains the same authority as statute provides.

A full explanation is provided in the NPRM preamble within

Table 2 Explanation of Changes

which states: "Programmatic Implementationan explanation

of changes is provided. It states: A.A.C. R18-9-110 and R18-9-A308 invalidly limit statutory enforcement discretion foran entire class of facilities, namely OWTFs. Rather, OWTFs are subject to enforcement under all applicable provisions of A.R.S. Title49,

Chapter 2, Article 4. Therefore, ADEQ is repealing A.A.C. R18-9- A308 and modifying A.A.C. R18-9-110 to reflect proper applicationof enforcement statutes. Note that other statutory provisions are also applicable to facilities, including those for environmentalnuisances under A.R.S. Title 49, Chapter 1, Article 3."

Jenny

The enforcement provision modification was never discussed.

This provision, as amended here, was sent to stakeholders, including OWAC, in multiple drafts. It was discussed in several meetings, including the public stakeholder meeting in October 2021, as reflected in the slide deck posted on ADEQ's website.

Public commenter

I do not want wastewater used for drinking water.

Thank you for your comment. This rule does not allow wastewater to be used for drinking water. Please keep in

Lori zitov

Would the changes be applied to existing facilities? How will the rules apply to existing facilities?

For the most part. These are construction permits for the most part. Design requirements for approval will not be retroactively applied to existing facilities. For example, if a permit was approved where……However, as existing facilities are modified or replaced, the current rules will apply. Some rules will impact existing facilities, but only as clarifications for how the rule should be applied currently already.

How jurisdiction between ADEQ and the counties will play out? Will this usurp the county programs? Or will ADEQ step back from it if the counties have their own program? How will that played out?

Pursuant to…….if separate authority, follow that, in conjunction with and not in conflict with….

Dave Bartholemew – echo jake garrett's sentiments, thank you to deq for getting this process rolling, hopefully between deq and owac we can keep working on streamlining these rules making this rules make sense and help them connect and just make a better program. Thank you for your herculean efforts so far and I look forward to the future of getting this up and running

Jake Garrett – thank you to you and Heidi and everyone who participated in this very professional hearing and want ot complement how you've conducted yourselves and length you've gone to to allow the public to make comments at this time

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

In addition to the definitions established in A.R.S. § 49-201, the following terms apply to Articles 1, 2, 3, and 4 of this Chapter:

1. "Aggregate" means a clean graded hard rock, volcanic rock, or gravel of uniform size, between 3/4 inch and 2 1/2 inches in diameter, offering 30 percent or more void space, washed or prepared to be free of fine materials that will impair absorption surface performance, and has a hardness value of three or greater on the Moh's Scale of Hardness (can scratch a copper penny).
2. "Alert level" means a value or criterion established in an individual permit that serves as an early warning indicating a potential violation of a permit condition related to BADCT or the discharge of a pollutant to groundwater.
3. "AQL" means an aquifer quality limit and is a permit limitation set for aquifer water quality measured at the point of compliance that either represents an Aquifer Water Quality Standard or, if an Aquifer Water Quality Standard for a pollutant is exceeded in an aquifer at the time of permit issuance, represents the ambient water quality for that pollutant.
4. "Aquifer Protection Permit" means an individual permit or a general permit issued under A.R.S. §§ 49203, 49241 through 49-252, and Articles 1, 2, and 3 of this Chapter.
5. "Aquifer Water Quality Standard" means a standard established under A.R.S. §§ 49221 and 49223.
6. "AZPDES" means the Arizona Pollutant Discharge Elimination System, which is the state program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under A.R.S. Title 49, Chapter 2, Article 3.1 and 18 A.A.C. 9, Articles 9 and 10.
7. "BADCT" means the best available demonstrated control technology, process, operating method, or other alternative to achieve the greatest degree of discharge reduction determined for a facility by the Director under A.R.S. § 49243.
8. "Bedroom" means, for the purpose of determining design flow for an on-site wastewater treatment facility for a dwelling, any room that has:
   a. A floor space of at least 70 square feet in area, excluding closets;
   b A ceiling height of at least 7 feet;
   c. Electrical service and ventilation;
   d. A closet or an area where a closet could be constructed;
   e. At least one window capable of being opened and used for emergency egress; and
   f. A method of entry and exit to the room that allows the room to be considered distinct from other rooms in the dwelling and to afford a level of privacy customarily expected for such a room.
9. "Book net worth" means the net difference between total assets and total liabilities.
10. "Chamber technology" means a method for dispersing treated wastewater into soil from an on-site wastewater treatment facility by one or more manufactured leaching chambers with an open bottom and louvered, load-bearing sidewalls that substitute for an aggregate-filled trench described in R18-9-E302.
    has been constructed or will be constructed on real property.
11. "CCR" means coal combustion residuals which include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.
12. "CCR landfill" means an area of land or an excavation that receives CCR and which is not a municipal solid waste landfill, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. A CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of beneficial use of CCR.
13. "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.
14. "CCR unit" means any CCR landfill which receives CCR, any CCR surface impoundment designed to hold an accumulation of CCR and liquids, and the unit treats, stores or disposes of CCR. CCR unit includes a lateral expansion of a CCR unit, or a combination of more than one of these units that receives CCR.
15. "CMOM Plan" means a Capacity, Management, Operations, and Maintenance Plan, which is a written plan that describes the activities a permittee will engage in and actions a permittee will take to ensure that the capacity of the sewage collection system, when unobstructed, is sufficient to convey the peak wet weather flow through each reach of sewer, and provides for the management, operation, and maintenance of the permittee's sewage collection system.
16. "Design capacity" means the volume of a containment feature at a discharging facility that accommodates all permitted flows and meets all Aquifer Protection Permit conditions, including allowances for appropriate peaking and safety factors to ensure sustained, reliable operation.
17. "Design flow" means the daily flow rate a facility is designed to accommodate on a sustained basis while satisfying all Aquifer Protection Permit discharge limitations and treatment and operational requirements. The design flow either incorporates or is used with appropriate peaking and safety factors to ensure sustained, reliable operation.
18. "Direct reuse site" means an area where reclaimed water is applied or impounded.
19. "Disposal works" means the system for disposing treated wastewater generated by the treatment works of a sewage treatment facility or on-site wastewater treatment facility, by surface or subsurface methods. Disposal works do not include systems for activities regulated under 18 A.A.C. 9, Article 7.
20. *"Drywell" means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended.* A.R.S. § 49-331(3)
21. "Dwelling" means any building, structure, or improvement intended for residential use or related activity, including a house, an apartment unit, a condominium unit, a townhouse, or a mobile or manufactured home that

22. "Final permit determination" means a written notification to the applicant of the Director's final decision whether to issue or deny an Individual Aquifer Protection Permit.
23. "Groundwater Quality Protection Permit" means a permit issued by the Arizona Department of Health Services or the Department before September 27, 1989 that regulates the discharge of pollutants that may affect groundwater.
24. "Homeowner's association" means a nonprofit corporation or unincorporated association of owners created pursuant to a declaration to own and operate portions of a planned community and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
25. "Injection well" means a well that receives a discharge through pressure injection or gravity flow.
26. "Intermediate stockpile" means in-process material not intended for long-term storage that is in transit from one process to another at a mining site. Intermediate stockpile does not include metallic ore concentrate stockpiles or feedstocks not originating at the mining site.
27. "Land treatment facility" means an operation designed to treat and improve the quality of waste, wastewater, or both, by placement wholly or in part on the land surface to perform part or all of the treatment. A land treatment facility includes a facility that performs biosolids drying, processing, or composting, but not land application performed in compliance with 18 A.A.C. 9, Article 10.
28. "Mining site" means a site assigned one or more of the following primary Standard Industrial Classification Codes: 10, 12, 14, 32, and 33, and includes noncontiguous properties owned or operated by the same person and connected by a right-of-way controlled by that person to which the public is not allowed access.
29. "Nitrogen Management Area" means an area designated by the Director for which the Director prescribes measures on an area-wide basis to control sources of nitrogen, including cumulative discharges from on-site wastewater treatment facilities, that threaten to cause or have caused an exceedance of the Aquifer Water Quality Standard for nitrate.
30. "Notice of Disposal" means a document submitted to the Arizona Department of Health Services or the Department before September 27, 1989, giving notification of a pollutant discharge that may affect groundwater.
31. "On-site wastewater treatment facility" means a conventional septic tank system or alternative system installed at a site to treat and dispose of wastewater, predominantly of human origin, generated at that site. An on-site wastewater treatment facility does not include a pre-fabricated, manufactured treatment works that typically uses an activated sludge unit process and has a design flow of 3000 gallons per day or more.
32. "Operational life" means the designed or planned period during which a facility remains operational while being subject to permit conditions, including closure requirements. Operational life does not include post-closure activities.
33. *"Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.* A.R.S. § 49-201(26). For the purposes of permitting a sewage treatment facility under Article 2 of this Chapter, person does not include a homeowner's association.
34. "Pilot project" means a short-term, limited-scale test designed to gain information regarding site conditions, project feasibility, or application of a new technology.
35. "Process solution" means a pregnant leach solution, barren solution, raffinate, or other solution uniquely associated with the mining or metals recovery process.
36. "Residential soil remediation level" means the applicable predetermined standard established in 18 A.A.C. 7, Article 2, Appendix A.
37. "Seasonal high water table" means the free surface representing the highest point of groundwater rise within an aquifer due to seasonal water table changes over the course of a year.
38. "Setback" means a minimum horizontal distance maintained between a feature of a discharging facility and a potential point of impact.
39. "Sewage" means untreated wastes from toilets, baths, sinks, lavatories, laundries, other plumbing fixtures, and waste pumped from septic tanks in places of human habitation, employment, or recreation. Sewage does not include gray water as defined in R18-9-701(4), if the gray water is reused according to 18 A.A.C. 9, Article 7.
40. "Sewage collection system" means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.
41. "Sewage treatment facility" means a plant or system for sewage treatment and disposal, except for an on-site wastewater treatment facility, that consists of treatment works, disposal works and appurtenant pipelines, conduits, pumping stations, and related subsystems and devices. A sewage treatment facility does not include components of the sewage collection system or the reclaimed water distribution system.
42. "Surface impoundment" means a pit, pond, or lagoon with a surface dimension equal to or greater than its depth, and used for the storage, holding, settling, treatment, or discharge of liquid pollutants or pollutants containing free liquids.
43. "Tracer" means a substance, such as a dye or other chemical, used to change the characteristic of water or some other fluid to detect movement.
44. "Tracer study" means a test conducted using a tracer to measure the flow velocity, hydraulic conductivity, flow direction, hydrodynamic dispersion, partitioning coefficient, or other property of a hydrologic system.
45. "Treatment works" means a plant, device, unit process, or other works, regardless of ownership, used for treating, stabilizing, or holding municipal or domestic sewage in a sewage treatment facility or on-site wastewater treatment facility.
46. "Typical sewage" means sewage conveyed to an on-site wastewater treatment facility in which the total suspended solids (TSS) content does not exceed 430 mg/l, the five-day biochemical oxygen demand (BOD_5) does not exceed 380 mg/l, the total nitrogen does not exceed

53 mg/l, and the content of oil and grease does not exceed 75 mg/l.

47. *"Underground storage facility" means a constructed underground storage facility or a managed underground storage facility.* A.R.S. § 45-802.01(21).
48. "Waters of the United States" means:
    a. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
    b. All interstate waters, including interstate wetlands;
    c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any waters:
        i. That are or could be used by interstate or foreign travelers for recreational or other purposes;
        ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
        iii. That are used or could be used for industrial purposes by industries in interstate commerce;
    d. All impoundments of waters defined as waters of the United States under this definition;
    e. Tributaries of waters identified in subsections (a) through (d);
    f. The territorial sea; and
    g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (a) through (f).

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final expedited rulemaking at 25 A.A.R. 3060, effective immediately September 23, 2019, pursuant to A.R.S. § 41-1027(H) (Supp. 19-3).

R18-9-102. Facilities to which Articles 1, 2, and 3 Do Not Apply

Articles 1, 2, and 3 do not apply to:

1. A drywell used solely to receive storm runoff and located so that no use, storage, loading, or treating of hazardous substances occurs in the drainage area;
2. A direct pesticide application in the commercial production of plants and animals subject to the Federal Insecticide, Fungicide, and Rodenticide Act (P.L. 92-516; 86 Stat. 975; 7 United States Code 135 et seq., as amended), or A.R.S. §§ 49-301 through 49-309 and applicable rules, or A.R.S. Title 3, Chapter 2, Article 6 and applicable rules.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-103. Class Exemptions

Class exemptions. In addition to the classes or categories of facilities listed in A.R.S. § 49-250(B), the following classes or categories of facilities are exempt from the Aquifer Protection Permit requirements in Articles 1, 2, and 3 of this Chapter:

1. Facilities that treat, store, or dispose of hazardous waste and have been issued a permit or have interim status, under the Resource Conservation and Recovery Act (P.L. 94580; 90 Stat. 2796; 42 U.S.C. 6901 et seq., as amended), or have been issued a permit according to the hazardous waste management rules adopted under 18 A.A.C. 8, Article 2;
2. Underground storage tanks that contain a regulated substance as defined in A.R.S. § 49-1001;
3. Facilities for the disposal of solid waste, as defined in A.R.S. § 49-701.01, that are located in unincorporated areas and receive solid waste from four or fewer households;
4. Land application of biosolids in compliance with 18 A.A.C. 9, Articles 9 and 10;
5. CCR Units regulated by 40 CFR 257, Subpart D or by a permit in effect under a Department program approved by the United States Environmental Protection Agency in accordance with 42 U.S.C. § 6945(d)(1);
6. Underground Injection Control Class V injection wells regulated under an area or individual permit per 18 A.A.C. 9, Article 6, Part I.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Subsection 4 citation corrected to reflect recodification at 7 A.A.R. 2522 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3). Amended by final expedited rulemaking at 25 A.A.R. 3060, effective immediately September 23, 2019, pursuant to A.R.S. § 41-1027(H) (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-104. Transition from Notices of Disposal and Groundwater Quality Protection Permitted Facilities

A person who owns, operates, or operated a facility on or after January 1, 1986 for which a Notice of Disposal was filed or a Groundwater Quality Protection Permit was issued shall, within 90 days from the date on the Director's notification, submit an application for an Aquifer Protection Permit or a closure plan as specified under A.R.S. § 49-252. The person shall obtain a permit for continued operation, closure of the facility, or clean closure approval. Failure to submit an application or closure plan as required terminates continuance of the Notice of Disposal or Groundwater Quality Protection Permit.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-105. Permit Continuance

A. Continuance.

1. Groundwater Quality Protection Permits.
    a. Subject to R18-9-104 and other provisions of this Section, a Groundwater Quality Protection Permit issued before September 27, 1989 is valid according to the terms of the permit until replaced by an Aquifer Protection Permit issued by the Department.

b. A person who owns or operates a facility to which a Groundwater Quality Protection Permit was issued is in compliance with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3, if the facility:
   i. Meets the conditions of the Groundwater Quality Protection Permit; and
   ii. Is not causing or contributing to the violation of any Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.

2. Notice of Disposal. A person who owns or operates a facility for which a Notice of Disposal was filed before September 27, 1989 complies with Articles 1, 2, and 3 of this Chapter and A.R.S. Title 49, Chapter 2, Article 3 if the facility is not causing or contributing to the violation of an Aquifer Water Quality Standard at a point of compliance, determined by the criteria in A.R.S. § 49-244.

3. Aquifer Protection Permit application submittal. A person who did not file a Notice of Disposal and does not possess a Groundwater Quality Protection Permit or an Aquifer Protection Permit for an existing facility, but submitted the information required in applicable rules before December 27, 1989, is in compliance with Articles 1, 2, and 3 of this Chapter only if the person submitted an Aquifer Protection Permit application to the Department before January 1, 2001.

B. Applicability. Subsection (A) applies until the Director:
1. Issues an Aquifer Protection Permit for the facility,
2. Denies an Aquifer Protection Permit for the facility,
3. Issues a letter of clean closure approval for the facility under A.R.S. § 49-252, or
4. Determines that the person failed to submit an application under R18-9-104.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended effective November 12, 1996 (Supp. 96-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-106. Determination of Applicability

A. A person who engages or who intends to engage in an operation or an activity that may result in a discharge regulated under Articles 1, 2, and 3 of this Chapter may submit a request, on a form provided by the Department, that the Department determine the applicability of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter to the operation or activity.

B. A person requesting a determination of applicability shall provide the following information and the applicable fee under 18 A.A.C. 14:
1. The name and location of the operation or activity;
2. The name of any person who is engaging or who proposes to engage in the operation or activity;
3. A description of the operation or activity;
4. A description of the volume, chemical composition, and characteristics of materials stored, handled, used, or disposed of in the operation or activity; and
5. Any other information required by the Director to make the determination of applicability.

C. Within 45 days after receipt of a request for a determination of applicability, the Director shall notify in writing the person making the request that the operation or activity:
1. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or facility does not discharge as described under A.R.S. § 49-241;
2. Is not subject to the requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter because the operation or activity is exempted by A.R.S. § 49-250 or R18-9-103;
3. Is eligible for a general permit under A.R.S. §§ 49-245.01, 49-245.02 or 49-247 or Article 3 of this Chapter, specifying the particular general permit that would apply if the person meets the conditions of the permit; or
4. Is subject to the permit requirements of A.R.S. §§ 49-241 through 49-252 and Articles 1, 2, and 3 of this Chapter.

D. If, after issuing a determination of applicability under this Section, the Director concludes that the determination or the information relied upon for a determination is inaccurate, the Director may modify or withdraw its determination upon written notice to the person who requested the determination of applicability.

E. If the Director determines that an operation or activity is subject to the requirements of A.R.S. §§ 49-241 through 49-252, the person who owns or operates the discharging facility shall, within 90 days from receiving the Director's written notification, submit an application for an Aquifer Protection Permit or a closure plan.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Amended by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-107. Consolidation of Aquifer Protection Permits

A. The Director may consolidate any number of individual permits or the coverage for any facility authorized to discharge under a general permit into a single individual permit, if:
1. The facilities are part of the same project or operation and are located in a contiguous geographic area, or
2. The facilities are part of an area under the jurisdiction of a single political subdivision.

B. All applicable individual permit requirements established in Articles 1 and 2 of this Chapter apply to the consolidation of Aquifer Protection Permits.

Historical Note

Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-108. Public Notice

A. Individual permits.
1. The Department shall provide the entities specified in subsection (A)(2), with monthly written notification, by regular mail or electronically, of the following:
   a. Individual permit applications,
   b. Temporary permit applications,
   c. Preliminary and final decisions by the Director whether to issue or deny an individual or temporary permit,

d. Closure plans received under R18-9-A209(B),
e. Significant permit amendments and "other" permit amendments,
f. Permit revocations, and
g. Clean closure approvals.

2. Entities.
a. Each county department of health, environmental services department, or comparable department;
b. A federal, state, local agency, or council of government, that may be affected by the permit action; and
c. A person who requested, in writing, notification of the activities described in subsection (A).

3. The Department may post the information referenced in subsections (A)(1) and (2) on the Department web site: www.azdeq.gov.

B. General permits. Public notice requirements do not apply.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-109. Public Participation

A. Notice of Preliminary Decision.
1. The Department shall publish a Notice of Preliminary Decision regarding the issuance or denial of a significant permit amendment or a final permit determination in one or more newspapers of general circulation where the facility is located.
2. The Department shall accept written comments from the public before a significant permit amendment or a final permit determination is made.
3. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.

B. Public hearing.
1. The Department shall provide notice and conduct a public hearing to address a Notice of Preliminary Decision regarding a significant permit amendment or final permit determination if:
a. Significant public interest in a public hearing exists, or
b. Significant issues or information has been brought to the attention of the Department that has not been considered previously in the permitting process.
2. If, after publication of the Notice of Preliminary Decision, the Department determines that a public hearing is necessary, the Department shall schedule a public hearing and publish the Notice of Preliminary Decision at least once, in one or more newspapers of general circulation where the facility is located.
3. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

C. The Department shall respond in writing to all comments submitted during the formal public comment period.

D. At the same time the Department notifies a permittee of a significant permit amendment or an applicant of the final permit determination, the Department shall send, through regular mail or electronically, a notice of the amendment or determination and the summary of response to comments to any person who submitted comments or attended a public hearing on the significant permit amendment or final permit determination.

E. General permits. Public participation requirements do not apply.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-110. Inspections, Violations, and Enforcement

A. The Department shall conduct an inspection of a permitted facility as specified under A.R.S. § 41-1009.

B. Except as provided in R18-9-A308, a person who owns or operates a facility contrary to a provision of Articles 1, 2, and 3 of this Chapter, violates a condition of an Aquifer Protection Permit, or violates a condition of a Groundwater Quality Protection Permit continued under R18-9-105(A)(1) is subject to the enforcement actions established under A.R.S. Title 49, Chapter 2, Article 4.

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-111. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-112. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-113. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-114. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-115. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-116. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-117. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-118. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-119. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-120. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective July 14, 1998 (Supp. 98-3).

R18-9-121. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-122. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-123. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective November 15, 1996 (Supp. 96-4).

R18-9-124. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-125. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-126. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-127. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-128. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Repealed effective November 12, 1996 (Supp. 96-4).

R18-9-129. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-130. Repealed

Historical Note
Adopted effective September 27, 1989 (Supp. 89-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

Appendix I. Repealed

Historical Note
Appendix I repealed by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A201. Individual Permit Application

A. An individual permit application covers one or more of the following categories:
1. Drywell,
2. Industrial,
3. Mining,
4. Wastewater,
5. Solid waste disposal, or
6. Land treatment facility.

B. An applicant for an individual permit shall provide the Department with:
1. The following information on an application form:
   a. The name and mailing address of the applicant;
   b. The name and mailing address of the owner of the facility;
   c. The name and mailing address of the operator of the facility;
   d. The legal description, including latitude and longitude, of the location of the facility;
   e. The expected operational life of the facility; and
   f. The permit number for any other federal or state environmental permit issued to the applicant for that facility or site.
2. A copy of the certificate of disclosure required by A.R.S. § 49-109;
3. Evidence that the facility complies with applicable municipal or county zoning ordinances, codes, and regulations;
4. Two copies of the technical information required in R18-9-A202(A);
5. Cost estimates for facility construction, operation, maintenance, closure, and post-closure as follows.
   a. The applicant shall ensure that the cost estimates are derived by an engineer, controller, or accountant using competitive bids, construction plan take-off's, specifications, operating history for similar facilities, or other appropriate sources, as applicable.
   b. The following cost estimates that are representative of regional fair market costs:

ii. Meet the pretreatment requirements of A.R.S. § 49-255.02; or

iii. For sewage treatment facilities without significant industrial input, conduct periodic monitoring to detect industrial discharge; and

7. A maximum seepage rate less than 550 gallons per day per acre for all containment structures within the treatment works. A sewage treatment facility that consists solely of containment structures with no other form of discharge complies with Article 2 Part B by operating below the maximum 550 gallon per day per acre seepage rate.

C. The Director shall incorporate treated wastewater discharge limitations and associated monitoring specified in this Section into the individual permit to ensure compliance with the BADCT requirements.

D. An applicant shall formally request in writing and justify an alternative that allows less stringent performance than that established in this Section, based on the criteria specified in A.R.S. § 49-243(B)(1).

E. If the request specified in subsection (D) involves treatment or disposal works that are a demonstration, experimental, or pilot project, the Director may issue an individual permit that places greater reliance on monitoring to ensure operational capability.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in A.R.S. § 49-201(16), the BADCT shall conform with the following:

1. The designer shall identify one or more design improvements that brings the facility closer to or within the treatment performance requirements specified in R18-9-B204, considering the factors listed in A.R.S. § 49-243(B)(1)(a) and (B)(1)(c) through (h);
2. The designer may eliminate from consideration alternatives identified in subsection (1) that are more expensive than the number of gallons of design flow times $1.00 per gallon; and
3. The designer shall select a design that incorporates one or more of the considered alternatives by giving preference to measures that will provide the greatest improvement toward meeting the treatment performance requirements specified in R18-9-B204.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-B206. Treatment Performance Requirements for Expansion of a Facility

For an expansion of a sewage treatment facility, the BADCT shall conform with the following:

1. New facility BADCT requirements in R18-9-B204 apply to the following expansions:
   a. An increase in design flow by an amount equal to or greater than the increases specified in R18-9-A211(B)(2)(b); or
   b. An addition of a physically separate process or major piece of production equipment, building, or structure that causes a separate discharge to the extent that the treatment performance requirements for the pollutants addressed in R18-9-B204 can practicably be achieved by the addition.
2. BADCT requirements for existing facilities established in R18-9-B205 apply to an expansion not covered under subsection (1).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART A. GENERAL PROVISIONS

R18-9-A301. Discharging Under a General Permit

A. Discharging requirements.

1. Type 1 General Permit. A person may discharge under a Type 1 General Permit without submitting a Notice of Intent to Discharge if the discharge is authorized by and meets:
   a. The applicable requirements of Article 3, Part A of this Chapter; and
   b. The specific terms of the Type 1 General Permit established in Article 3, Part B of this Chapter.
2. Type 2 General Permit. A person may discharge under a Type 2 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 2 General Permit established in Article 3, Part C of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B); and
   c. The person submits the applicable fee established in 18 A.A.C. 14.
3. Type 3 General Permit. A person may discharge under a Type 3 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 3 General Permit established in Article 3, Part D of this Chapter;
   b. The person files a Notice of Intent to Discharge under subsection (B);
   c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review and receives a written Discharge Authorization from the Director; and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
4. Type 4 General Permit. A person may discharge under a Type 4 General Permit if:
   a. The discharge is authorized by and meets the applicable requirements of Article 3, Part A of this Chapter and the specific terms of the Type 4 General Permit established in Article 3, Part E of this Chapter;

b. The person files a Notice of Intent to Discharge under subsection (B);
c. The person satisfies any deficiency requests from the Department regarding the administrative completeness review and substantive review, including any deficiency relating to the construction of the facility;
d. The person receives a written Discharge Authorization from the Director before the facility discharges; and
e. The person submits the applicable fee established in 18 A.A.C. 14 or according to A.R.S. §§ 49-107 and 49-112.

B. Notice of Intent to Discharge.
1. A person seeking a Discharge Authorization under a general permit under subsections (A)(2), (3), or (4) shall submit, by certified mail, in person, or by another method approved by the Department, a Notice of Intent to Discharge on a form provided by the Department.
2. The Notice of Intent to Discharge shall include:
a. The name, address, and telephone number of the applicant;
b. The name, address, and telephone number of a contact person familiar with the operation of the facility;
c. The name, position, address, and telephone number of the owner or operator of the facility who has overall responsibility for compliance with the permit;
d. The legal description of the discharge areas, including the latitude and longitude coordinates;
e. A narrative description of the facility or project, including expected dates of operation, rate, and volume of discharge;
f. The additional requirements, if any, specified in the general permit for which the authorization is being sought;
g. A listing of any other federal or state environmental permits issued for or needed by the facility, including any individual permit, Groundwater Quality Protection Permit, or Notice of Disposal that may have previously authorized the discharge; and
h. A signature on the Notice of Intent to Discharge certifying that the applicant agrees to comply with all applicable requirements of this Article, including specific terms of the general permit.
3. Receipt of a completed Notice of Intent to Discharge by the Department begins the administrative completeness review for a Type 3 or Type 4 General Permit.

C. Type 3 General Permit authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of the general permit have been met.
2. Discharge Authorization issuance.
a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of the general permit and the applicable requirements of this Article, the Director shall issue a Discharge Authorization.
b. The Discharge Authorization authorizes the person to discharge under terms of the general permit and applicable requirements of this Article.
3. Discharge Authorization denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:
a. The reason for the denial with reference to the statute or rule on which the denial is based;
b. The person's right to appeal the denial, including 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 person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

D. Type 4 General Permit review.
1. Pre-construction phase and facility construction. A person shall not begin facility construction until the Director issues a Construction Authorization.
a. Inspection. The Department may inspect the facility site before construction to determine that the applicable terms of the general permit will be met.
b. Review. If the Department determines, based on an inspection or its review of design plans, specifications, or other required documents that the facility does not conform to the requirements of the general permit or other applicable requirements of this Article, the Department shall make a written request for additional information to determine whether the facility will meet the requirements of the general permit.
c. Construction Authorization. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design conforms with the requirements of the general permit and other applicable requirements of this Article, the Director shall issue a Construction Authorization to the person seeking to discharge. A Construction Authorization for an on-site wastewater treatment facility shall contain:
i. The design flow of the facility,
ii. The characteristics of the wastewater sources contributing to the facility,
iii. The general permits that apply, and
iv. A list of the documents that are the basis for the authorization.
d. Construction Authorization denial. If the Department determines, based on the review described in subsection (D)(1)(b) and any additional information submitted in response to a written request, that the facility design does not conform to the requirements of the general permit or other applicable requirements of this Article, the Director shall notify the person of the decision not to issue a Construction Authorization. The notification shall include the information listed in subsections (D)(2)(d).
e. Construction.
i. A person shall complete construction within two years of receiving a Construction Authorization.
ii. Construction shall conform with the plans and documents approved by the Department in the Construction Authorization. A change in location, configuration, dimension, depth, material,

or installation procedure does not require approval by the Department if the change continues to conform with the specific standard in this Article used as the basis for the original design.

iii. The person shall record all changes made during construction, including any changes approved under R18-9-A312(G) on the site plan as specified in R18-9-A309(C)(1) or on documents as specified in R18-9-A309(C)(2) or R18-9-E301(E), as applicable.

f. Completion of construction.

i. After completing construction of the facility, the person seeking to discharge shall submit any applicable documents specified in R18-9-A309(C) with the Request for Discharge Authorization form for an on-site wastewater treatment facility and the Engineer's Certificate of Completion specified in R18-9-E301(E) for a sewage collection system. Receipt of the documents by the Department initiates the post-construction review phase.

ii. If the Department does not receive the documentation specified in subsection (D)(1)(f)(i) by the end of the two-year construction period, the Notice of Intent to Discharge expires, and the person shall not continue construction or discharge.

iii. If the Notice of Intent to Discharge expires, the person shall submit a new Notice of Intent to Discharge under subsection (B) and the applicable fee under subsection (A)(4)(e) to begin or continue construction.

2. Post-construction phase.

a. Inspection. The Department may inspect the facility before issuing a Discharge Authorization to determine whether:

i. The construction conforms with the design authorized by the Department under subsection (D)(1)(c) and any changes recorded on the site plan as specified in R18-9-A309(C)(1) or other documents as specified in R18-9-A309(C)(2), or R18-9-E301(E), as applicable; and

ii. Terms of the general permit and applicable terms of this Article are met.

b. Deficiencies. If the Department identifies deficiencies based on an inspection of the constructed facility or during the review of documents submitted with the request for the Discharge Authorization, the Director shall provide a written explanation of the deficiencies to the person.

c. Discharge Authorization issuance.

i. Upon satisfactory completion of construction and documents required under R18-9-A309(C)(1) R18-9-A309(C)(2), or R18-9-E301(E), as applicable, the Director shall issue a Discharge Authorization.

ii. The Discharge Authorization allows a person to discharge under terms of the general permit and applicable requirements of this Article and the stated terms of the Construction Authorization.

d. Discharge Authorization denial. If, after receiving evidence of correction submitted by the person seeking to discharge, the Department determines that the deficiencies are not satisfactorily corrected, the Director shall notify the person seeking to discharge of the Director's decision not to issue the Discharge Authorization and the person shall not discharge under the general permit. The notification shall inform the person of:

i. The reason for the denial with reference to the statute or rule on which the denial is based;

ii. The person's right to appeal the denial, including 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

iii. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A302. Point of Compliance

The point of compliance is the point at which compliance with Aquifer Water Quality Standards is determined.

1. Except as provided in this Section or as stated in a specific general permit, the applicable point of compliance at a facility operating under a general permit is a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility.
2. The point of compliance is the limit of the pollutant management area.
   a. The pollutant management area is the horizontal plane of the area on which pollutants are or will be placed.
   b. If a facility operating under a general permit is located within a larger pollutant management area established under an individual permit issued to the same person, the point of compliance is the applicable point of compliance established in the individual permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A303. Renewal of a Discharge Authorization

A. Unless a Discharge Authorization under a general permit is transferred, revoked, or expired, a person may discharge under the general permit for the authorization period as specified by the permit type, including any closure activities required by a specific general permit.

B. An authorization to discharge under a Type 1 or Type 4 General Permit is valid for the operational life of the facility.

C. A permittee authorized under a Type 2 or Type 3 General Permit shall submit an application for renewal on a form provided by the Department with the applicable fee established in 18 A.A.C. 14 at least 30 days before the end of the renewal period.

1. The following are the renewal periods for Type 2 and Type 3 General Permit Discharge Authorizations:
   a. 2.01 General Permit, five years;
   b. 2.02 General Permit, seven years;
   c. 2.03 General Permit, two years;

d. 2.04 General Permit, five years;
e. 2.05 General Permit, five years;
f. 2.06 General Permit, five years; and
g. Type 3 General Permits, five years.

2. The renewal period for coverage under a Type 2 General Permit begins on the date the Department receives the Notice of Intent to Discharge.
3. The renewal period for coverage under a Type 3 General Permit begins on the date the Director issues the written Discharge Authorization.

D. If the Discharge Authorization is not renewed within the renewal period specified in subsection (B)(1), the Discharge Authorization expires.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A304. Notice of Transfer

A. Transfer of authorization under a Type 1 General Permit.
1. A permittee transferring ownership of a facility covered by a Type 1.01 through 1.08, or 1.10 through 1.12 General Permit is not required to notify the Department of the transfer.
2. A permittee transferring ownership of an on-site wastewater treatment facility operating under a Type 1.09 General Permit shall follow the requirements under R18-9-A316.
3. A permittee transferring ownership of a sewage treatment facility operating under a Type 1.09 General Permit shall submit a Notice of Transfer to the Department by certified mail within 15 days after the date that ownership changes.

B. Transfer of authorization under a Type 2, 3, or 4.01 General Permit.
1. If a change of ownership occurs for a facility covered by a Type 2, 3, or 4.01 General Permit facility, the permittee shall provide a Notice of Transfer to the Department or to the health or environmental agency delegated by the Director to administer Type 4.01 General Permits, by certified mail within 15 days after the date that ownership changes. The Notice of Transfer, on a form approved by the Department, shall include:
   a. Any information that has changed from the original Notice of Intent to Discharge,
   b. Any other transfer requirements specified for the general permit, and
   c. The applicable fee established in 18 A.A.C. 14.
2. The Department may require a permittee covered by a Type 2, 3, or Type 4.01 General Permit to submit a new Notice of Intent to Discharge and to obtain a new authorization under R18-9-A301(A)(2), (3) and (4), as applicable, if the volume or characteristics of the discharge have changed from the original application.

C. Transfer of a Type 4.02 through 4.23 General Permit. A permittee transferring ownership of an on-site wastewater treatment facility operating under one or more Type 4.02 through 4.23 General Permits shall follow the requirements under R18-9-A316.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A305. Facility Expansion

A. A permittee may expand a facility covered by a Type 2 General Permit if, before the expansion, the permittee provides the Department with the following information by certified mail:
1. An updated Notice of Intent to Discharge,
2. A certification signed by the facility owner stating that the expansion continues to meet all the conditions of the applicable general permit, and
3. The applicable fee established under 18 A.A.C. 14.

B. A permittee may expand a facility covered by a Type 3 or Type 4 General Permit if the permittee submits a new Notice of Intent to Discharge and the Department issues a new Discharge Authorization.
1. The person submitting the Notice of Intent to Discharge for the expansion may reference the previous Notice of Intent to Discharge if the previous information is identical, but shall provide full and detailed information for any changed items.
2. The Notice of Intent to Discharge shall include:
   a. Any applicable fee established under 18 A.A.C. 14, and
   b. A certification signed by the facility owner stating that the expansion continues to meet all of the requirements relating to the applicable general permit.
3. Upon receiving the Notice of Intent to Discharge, the Department shall follow the applicable review and authorization procedures described in R18-9-A301(A)(3) or (4).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A306. Closure

A. To satisfy the requirements under A.R.S. § 49-252, a permittee shall close a facility authorized to discharge under a general permit as follows:
1. If the discharge is authorized under a Type 1.01 through 1.08, 1.10, 1.11, 2.05, 2.06, or 4.01 General Permit, closure notification is unnecessary and clean closure is met when:
   a. The permittee removes material that may contribute to a continued discharge; and
   b. The permittee eliminates, to the greatest degree practical, any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance;
2. For a discharge authorized under a Type 2.02, 3.02, 3.05 through 3.07, or 4.23 General Permit, the facility meets clean closure requirements if the permittee provides notice and submits sufficient information for the Department to determine that:
   a. Any material that may contribute to a continued discharge is removed;
   b. The permittee has eliminated to the greatest degree practicable any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance; and

c. Closure requirements, if any, established in the general permit are met;

3. If the discharge is authorized under a Type 1.12, 2.01, 2.03, 2.04, 3.01, 3.03, or 3.04 General Permit, the permittee shall comply with the closure requirements in the general permit;
4. If the discharge is from an on-site wastewater treatment facility authorized under a Type 1.09 or 4.02 through 4.22 General Permit, the permittee shall comply with the closure requirements in R18-9-A309(D); and
5. If the discharge is from a sewage treatment facility authorized under a Type 1.09 General Permit, the permittee shall comply with the closure requirements under subsection (A)(1).

B. For a facility operating under a general permit and located at a site where an individual area-wide permit has been issued, a permittee may defer some or all closure activities required by this subsection if the Director approves the deferral in writing. The permittee shall complete closure activities no later than the date that closure activities identified in the individual area-wide permit are performed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A307. Revocation of Coverage Under a General Permit

A. After notice and opportunity for a hearing, the Director may revoke coverage under a general permit and require the permittee to obtain an individual permit for any of the following:
1. The permittee fails to comply with the terms of the general permit as described in this Article, or
2. The discharge activity conducted under the terms of the general permit causes or contributes to the violation of an Aquifer Water Quality Standard at the applicable point of compliance.

B. The Director may revoke coverage under a general permit for any or all facilities within a specific geographic area, if, due to geologic or hydrologic conditions, the cumulative discharge of the facilities has violated or will violate an Aquifer Water Quality Standard established under A.R.S. §§ 49-221 and 49-223. Unless the public health or safety is jeopardized, the Director may allow continuation of a discharge until the Department:
1. Issues a single individual permit,
2. Authorizes a discharge under another general permit, or
3. Consolidates the discharges authorized under the general permits by following R18-9-107.

C. If an individual permit is issued to replace general permit coverage, the coverage under the general permit allowing the discharge is automatically revoked upon issuance of the individual permit and notification under subsection (E) is not required.

D. If the Director revokes coverage under a general permit, the facility shall not discharge unless allowed under subsection (B) or under an individual permit.

E. If coverage under the general permit is revoked under subsections (A) or (B), the Director shall notify the permittee by certified mail of the decision. The notification shall include:
1. A brief statement of the reason for the decision;
2. The effective revocation date of the general permit coverage;
3. A statement of whether the discharge shall cease or whether the discharge may continue under the terms of revocation in subsection (B);
4. Whether the Director requires a person to obtain an individual permit, and if so:
   a. An individual permit application form, and
   b. Identification of a deadline between 90 and 180 days after receipt of the notification for filing the application;
5. The applicant's right to appeal the revocation, the number of days the applicant has to file an appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
6. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A308. Violations and Enforcement For On-site Wastewater Treatment Facilities

A. A person who owns or operates an on-site wastewater treatment facility contrary to the provisions of a Type 4 General Permit is subject to the enforcement actions under A.R.S. § 49-261;

B. A person who violates this Article or a specific term of a general permit for an on-site wastewater treatment facility is subject to enforcement actions under A.R.S. § 49-261.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4).

R18-9-A309. General Provisions for On-site Wastewater Treatment Facilities

A. General requirements and prohibitions.
1. No person shall discharge sewage or wastewater that contains sewage from an on-site wastewater treatment facility except under an Aquifer Protection Permit issued by the Director.
2. A person shall not install, allow to be installed, or maintain a connection between any part of an on-site wastewater treatment facility and a drinking water system or supply so that sewage or wastewater contaminates the drinking water.
3. A person shall not bypass or release sewage or partially treated sewage that has not completed the treatment process from an on-site wastewater treatment facility.
4. A person shall not use a cesspool for sewage disposal.
5. A person constructing a new on-site wastewater treatment facility or replacing the treatment works or disposal works of an existing on-site wastewater treatment facility shall connect to a sewage collection system if:
   a. One of the following applies:
      i. A provision of a Nitrogen Management Area designation under R18-9-A317(C) requires connection;
      ii. A county, municipal, or sanitary district ordinance requires connection; or
      iii. The on-site wastewater treatment facility is located within an area identified for connection

to a sewage collection system by a Certified Area-wide Water Quality Management Plan adopted under 18 A.A.C. 5 or a master plan adopted by a majority of the elected officials of a board or council for a county, municipality, or sanitary district; or

b. A sewer service line extension is available at the property boundary and both of the following apply:
   i. The service connection fee is not more than $6000 for a dwelling or $10 times the daily design flow in gallons for a source other than a dwelling, and
   ii. The cost of constructing the building sewer from the wastewater source to the service connection is not more than $3000 for a dwelling or $5 times the daily design flow in gallons for a source other than a dwelling.

6. The Department shall prohibit installation of an on-site wastewater treatment facility if the installation will create an unsanitary condition or environmental nuisance or cause or contribute to a violation of an Aquifer Water Quality Standard.
7. A person shall operate the permitted on-site wastewater treatment facility so that:
   a. Flows to the facility consist of typical sewage and do not include any motor oil, gasoline, paint, varnish, solvent, pesticide, fertilizer, or other material not generally associated with toilet flushing, food preparation, laundry, or personal hygiene;
   b. Flows to the facility from commercial operations do not contain hazardous wastes as defined under A.R.S. § 49-921(5) or hazardous substances;
   c. If the sewage contains a component of nonresidential flow such as food preparation, laundry service, or other source, the sewage is adequately pretreated by an interceptor that complies with R18-9-A315 or another device authorized by a general permit or approved by the Department under R18-9-A312(G);
   d. Except as provided in subsection (A)(7)(c), a sewage flow that does not meet the numerical levels for typical sewage is adequately pretreated to meet the numerical levels before entry into an on-site wastewater treatment facility authorized by this Article;
   e. Flow to the facility does not exceed the design flow specified in the Discharge Authorization;
   f. The facility does not create an unsanitary condition or environmental nuisance, or cause or contribute to a violation of either a Aquifer Water Quality Standard or a Surface Water Quality Standard; and
   g. Activities at the site do not adversely affect the operation of the facility.
8. A person shall control the discharge of total nitrogen from an on-site wastewater treatment facility as follows:
   a. For an on-site wastewater treatment facility operating under the 1.09 General Permit or proposed for construction in a Notice of Intent to Discharge under a Type 4 General Permit and the facility is located within a Nitrogen Management Area, the provisions of R18-9-A317(D) apply;
   b. For an on-site wastewater treatment facility proposed for construction in a Notice of Intent to Discharge under R18-9-E323, the provisions of R18-9-E323(A)(4) apply;
   c. For a subdivision proposed under 18 A.A.C. 5, Article 4, for which on-site wastewater treatment facilities are used for sewage disposal, the permittee shall demonstrate in the geological report required in R18-5-408(E)(1) that total nitrogen loading from the on-site wastewater treatment facilities to groundwater is controlled by providing one of the following:
      i. For a subdivision platted for a single family dwelling on each lot, calculations that demonstrate that the number of lots within the subdivision does not exceed the number of acres contained within the boundaries of the subdivision;
      ii. For a subdivision platted for dwellings that do not meet the criteria specified in subsection (A)(8)(c)(i), calculations that demonstrate that the nitrogen loading over the total area of the subdivision is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the active treatment of the disposal fields, based on a total nitrogen contribution to raw sewage of 0.0333 pounds (15.0 grams) of total nitrogen per day per person; or
      iii. An analysis by another means of demonstration showing that the nitrogen loading to the aquifer due to on-site wastewater treatment facilities within the subdivision does not cause or contribute to a violation of the Aquifer Water Quality Standard for nitrate at the applicable point of compliance.
9. Repairs.
   a. A Notice of Intent to Discharge is not required for routine work that maintains a facility.
   b. The following work is not considered routine work and a Notice of Intent to Discharge is required:
      i. Converting a facility from operation only under gravity to one requiring a pump or other powered equipment for treatment or disposal;
      ii. Modifying or replacing a facility operating under the 1.09 General Permit with a different type of treatment or disposal technology;
      iii. Changing the treatment works or disposal works of a facility authorized under one or more Type 4 General Permits to a technology covered by any other Type 4 General Permit;
      iv. Extending the disposal works more than 10 feet beyond the footprint of the original disposal works;
      v. Reconstructing any part of the disposal works in soil that is inadequate for the treated wastewater flow or strength;
      vi. Expanding the footprint of the facility into or within setback buffers established in R18-9-A312(C);
      vii. Reconstructing the disposal works so that it does not meet the vertical separation requirements specified in R18-9-A312(E);
      viii. Modifying a treatment works or disposal works to accommodate a daily design flow or waste load greater than the daily design flow or waste load applicable to the original facility; or
      ix. Replacing the treatment works.

c. Components used in a repair shall meet the design, installation, and operational requirements of this Article.
d. A permittee shall comply with any local ordinance that provides independent permitting requirements for repair work.
e. A person shall not modify the facility so as to create an unsanitary condition or environmental nuisance or cause or contribute to an exceedance of a water quality standard.

10. Cumulative flows. When there is more than one on-site wastewater treatment facility on a property or on a site under common ownership or subject to a larger plan of sale or development, the Director shall determine whether an individual permit is required or whether the applicant qualifies for coverage to discharge under a general permit based on the sum of the design flows from the proposed installation and existing on-site wastewater treatment facilities on the property or site.
    a. If the sum of the design flows is less than 3000 gallons per day, the Department will process the application under R18-9-E302 through R18-9-E322, as applicable.
    b. If the sum of the design flows is equal to or more than 3000 gallons per day but less than 24,000 gallons per day, the Department will process the application under R18-9-E323.
    c. If the sum of the design flows is equal to or more than 24,000 gallons per day, the project does not qualify for coverage under a Type 4 General Permit and the applicant shall submit an application for an individual permit under Article 2 of this Chapter.

B. Notice of Intent to Discharge under a Type 4 General Permit. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information in a format approved by the Department:

1. A site investigation report that summarizes the results of the site investigation conducted under R18-9-A310(B), including:
    a. Results from any soil evaluation, percolation test, or seepage pit performance test;
    b. Any surface limiting condition identified in R18-9-A310(C)(2); and
    c. Any subsurface limiting condition identified in R18-9-A310(D)(2);
2. A site plan that includes:
    a. The parcel and lot number, if applicable, the property address or other appropriate legal description, the property size in acres, and the boundaries of the property;
    b. A plan of the site drawn to scale, dimensioned, and with a north arrow that shows:
        i. Proposed and existing on-site wastewater treatment facilities; dwellings and other buildings; driveways, swimming pools, tennis courts, wells, ponds, and any other paved, concrete, or water feature; down slopes and cut banks with a slope greater than 15 percent; retaining walls; and any other constructed feature that affects proper location, design, construction, or operation of the facility;
        ii. Any feature less than 200 feet from the on-site wastewater treatment facility excavation and reserve area that constrains the location of the on-site wastewater treatment facility because of setback limitations specified in R18-9-A312(C);
        iii. Topography, delineated with an appropriate contour interval, showing original and post-installation grades;
        iv. Location and identification of the treatment and disposal works and wastewater pipelines, the reserve disposal area, and location and identification of all sites of percolation testing and soil evaluation performed under R18-9-A310; and
        v. Location of any public sewer if 400 feet or less from the property line;
3. The design flow of the on-site wastewater treatment facility expressed in gallons per day based on Table 1, Unit Design Flows, the expected strength of the wastewater if the strength exceeds the levels for typical sewage, and:
    a. For a single family dwelling, a list of the number of bedrooms and plumbing fixtures and corresponding unit flows used to calculate the design flow of the facility; and
    b. For a dwelling other than for a single family, a list of each wastewater source and corresponding unit flows used to calculate the design flow of the facility;
4. A list of materials, components, and equipment for constructing the on-site wastewater treatment facility;
5. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department; and
6. For a facility that includes treatment or disposal works permitted under R18-9-E303 through R18-9-E323:
    a. Construction quality drawings that show the following:
        i. Systems, subsystems, and key components, including manufacturer's name, model number, and associated construction notes and inspection milestones, as applicable;
        ii. A title block, including facility owner, revision date, space for addition of the Department's application number, and page numbers;
        iii. A plan and profile with the elevations of wastewater pipelines, and treatment and disposal components, including calculations justifying the absorption area, to allow Department verification of hydraulic and performance characteristics;
        iv. Cross sections showing wastewater pipelines, construction details and elevations of treatment and disposal components, original and finished grades of the land surface, seasonal high water table if less than 10 feet below the bottom of a disposal works or 60 feet below the bottom of a seepage pit, and a soil elevation evaluation to allow Department verification of installation design and performance; and
        v. Drainage pattern, drainage controls, and erosion protection, as applicable, for the facility; and
    b. A draft operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;

C. Additional requirements for a Discharge Authorization under a Type 4 General Permit.
1. If the entire on-site wastewater treatment facility, including treatment works and disposal works, will be permitted under R18-9-E302, the Director shall issue the Discharge Authorization if:
   a. The site plan accurately reflects the final location and configuration of the components of the treatment and disposal works, and
   b. The applicant certifies on the Request for Discharge Authorization form that the septic tank passed the watertightness test required by R18-9-A314(5)(d).
2. If the on-site wastewater treatment facility is proposed under R18-9-E303 through R18-9-E323, either separately or in any combination with each other or with R18-9-E302, the Director shall issue the Discharge Authorization if the following documents are submitted to the Department:
   a. As-built plans showing changes from construction quality drawings submitted under subsection (B)(6)(a);
   b. A final list of equipment and materials showing changes from the list submitted under subsection (B)(4);
   c. A final operation and maintenance manual for the on-site wastewater treatment facility consisting of the tasks and schedules for operating and maintaining performance over a 20-year operational life;
   d. A certification that a service contract for ensuring that the facility is operated and maintained to meet the performance and other requirements of the applicable general permits exists for at least one year following the beginning of the operation of the on-site wastewater treatment facility, including the name of the service provider, if the on-site wastewater treatment facility is permitted under:
      i. R18-9-E304;
      ii. R18-9-E308 through R18-9-E315;
      iii. R18-9-E316, if the facility includes a pump; or
      iv. R18-9-E318 through R18-9-E322;
   e. Other documents, if required by the separate general permits in 18 A.A.C. 9, Article 3, Part E;
   f. A Certificate of Completion signed by the person responsible for assuring that installation of the facility conforms to the design approved under the Construction Authorization under R18-9-A301(D)(1)(c);
   g. The name of the installation contractor and the Registrar of Contractor's license number issued to the installation contractor; and
   h. A certification that any septic tank installed as a component of the on-site wastewater treatment facility passed the watertightness test required by R18-9-A314(5)(d).
3. The Director shall specify in the Discharge Authorization:
   a. The permitted design flow of the facility,
   b. The characteristics of the wastewater sources contributing to the facility, and
   c. A list of the documents submitted to and reviewed by the Department satisfying subsection (C)(2).

D. Closure requirements. A person who permanently discontinues use of an on-site wastewater treatment facility or a cesspool, or is ordered by the Director to close an abandoned facility shall:
1. Remove all sewage from the facility and dispose of the sewage in a lawful manner;
2. Disconnect and remove electrical and mechanical components;
3. Remove or collapse the top of any tank or containment structure.
   a. Punch a hole in the bottom of the tank or containment structure if the bottom is below the seasonal high groundwater table;
   b. Fill the tank or containment structure or any cavity resulting from its removal with earth, sand, gravel, concrete, or other approved material; and
   c. Regrade the surface to provide drainage away from the closed area;
4. Cut and plug both ends of the abandoned sewer drain pipe between the building and the on-site wastewater treatment facility not more than 5 feet outside the building foundation if practical, or cut and plug as close to each end as possible; and
5. Notify the Department within 30 days of closure.

E. Proprietary and other reviewed products.
1. The Department shall maintain a list of proprietary and other reviewed products that may be used for on-site wastewater treatment facilities to comply with the requirements of this Article. The list shall include appropriate information on the applicability and limitations of each product.
2. The list of proprietary and other reviewed products may include manufactured systems, subsystems, or components within the treatment works and disposal works if the products significantly contribute to the treatment performance of the system or provide the means to overcome site limitations. The Department will not list septic tanks, effluent filters or components that do not significantly affect treatment performance or provide the means to overcome site limitations.
3. A person may request that the Department add a product to the list of proprietary and other reviewed products. The request may include a proposed reference design for review. The Department shall ensure that performance values in the list reflect the treatment performance for defined wastewater characteristics. The Department shall assess fees under 18 A.A.C. 14 for product review.

F. Recordkeeping. A permittee authorized to discharge under one or more Type 4 General Permits shall maintain the Discharge Authorization and associated documents for the life of the facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A310. Site Investigation for Type 4 On-site Wastewater Treatment Facilities

A. Definition. For purposes of this Section, "clean water" means water free of colloidal material or additives that could affect chemical or physical properties if the water is used for percolation or seepage pit performance testing.

B. Site investigation. An applicant shall ensure that an investigator qualified under subsection (H) conducts a site investigation consisting of a surface characterization under subsection (C) and a subsurface characterization under subsection (D). The applicant shall submit the results in a format prescribed by the

Department. The site investigation shall provide sufficient data to:

1. Select appropriate primary and reserve disposal areas for an on-site wastewater treatment facility considering all surface and subsurface limiting conditions in subsections (C)(2) and (D)(2); and;
2. Effectively design and install the selected facility to serve the anticipated development at the site, whether or not limiting conditions exist.

C. Surface characterization.

1. Surface characterization method. The investigator shall characterize the surface of the site where an on-site wastewater treatment facility is proposed for installation using one of the following methods:
   a. The "Standard Practice for Surface Site Characterization for On-site Septic Systems, D5879-95 (2003)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   b. Another method of surface characterization that can, with accuracy and reliability, identify and delineate the surface limiting conditions specified in subsection (C)(2).
2. Surface limiting conditions. The investigator shall determine whether, and if so, where any of the following surface limiting conditions exist:
   a. The surface slope is greater than 15 percent at the intended location of the on-site wastewater treatment facility;
   b. Minimum setback distances are not within the limits specified in R18-9-A312(C);
   c. Surface drainage characteristics at the intended location of the on-site wastewater treatment facility will adversely affect the ability of the facility to function properly;
   d. A 100-year flood hazard zone, as indicated on the applicable flood insurance rate map, is located within the property on which the on-site wastewater treatment facility will be installed;
   e. An outcropping of rock that cannot be excavated exists in the intended location of the on-site wastewater treatment facility or will impair the function of soil receiving the discharge; and
   f. Fill material deposits exist in the intended location of the on-site wastewater treatment facility.

D. Subsurface characterization.

1. Subsurface characterization method. The investigator shall characterize the subsurface of the site where an on-site wastewater treatment facility is proposed for installation using one or more of the following methods:
   a. The following ASTM standard practices, which are incorporated by reference and do not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959:
      i. "Standard Practice for Subsurface Site Characterization of Test Pits for On-site Septic Systems, D5921-96(2003)e1 (2003)," published by the American Society for Testing and Materials; and
      ii. "Standard Practice for Soil Investigation and Sampling by Auger Borings, D1452-80 (2000)," published by the American Society for Testing and Materials;
   b. Percolation testing as specified in subsection (F);
   c. Seepage pit performance testing as specified in subsection (G); or
   d. Another method of subsurface characterization, approved by the Department, that ensures compliance with water quality standards through proper system location, selection, design, installation, and operation.
2. Subsurface limiting conditions. The investigator shall determine whether any of the following limiting conditions exist in the primary and reserve areas of the on-site wastewater treatment facility within a minimum of 12 feet of the land surface or to an impervious soil or rock layer if encountered at a shallower depth:
   a. The soil absorption rate determined under R18-9-A312(D)(2) is:
      i. More than 1.20 gallons per day per square foot, or
      ii. Less than 0.20 gallons per day per square foot;
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation specified in R18-9-A312(E)(1);
   c. Seasonal saturation occurs within surface soils that could affect the performance of the on-site wastewater treatment facility;
   d. One of the following subsurface conditions that may cause or contribute to the surfacing of wastewater:
      i. An impervious soil or rock layer,
      ii. A zone of saturation that substantially limits downward percolation from the disposal works,
      iii. Soil with more than 50 percent rock fragments;
   e. One of the following subsurface conditions that promotes accelerated downward movement of insufficiently treated wastewater:
      i. Fractures or joints in rock that are open, continuous, or interconnected;
      ii. Karst voids or channels; or
      iii. Highly permeable materials such as deposits of cobbles or boulders; or
   f. A subsurface condition that may convey wastewater to a water of the state and cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4.
3. Applicability of subsurface characterization methods. The investigator shall:
   a. For a seepage pit constructed under R18-9-E302, test seepage pit performance using the procedure specified in subsection (G);
   b. For an on-site wastewater treatment facility other than a seepage pit, characterize soil by using one or

more of the ASTM methods specified in subsection (D)(1)(a) if any of the following site conditions exists:

i. The natural surface slope at the intended location of the on-site wastewater treatment facility is greater than 15 percent;

ii. Bedrock or similar consolidated rock formation that cannot be excavated with a shovel outcrops on the property or occurs less than 12 feet below the land surface;

iii. The native soil at the surface or encountered in a boring, trench, or hole consists of more than 35 percent rock fragments;

iv. The seasonal high water table occurs within 12 feet of the natural land surface as encountered in trenches or borings, or evidenced by well records or hydrologic reports;

v. Seasonal saturation at the natural land surface occurs as indicated by soil mottling, vegetation adapted to near-surface saturated soils, or springs, seeps, or surface water near enough to the intended location of the on-site wastewater treatment facility to have a connection with potential seasonal saturation at the land surface; or

vi. A percolation test yields results outside the limits specified in subsection (D)(2)(a) and (b).

c. Percolation testing. The investigator may perform percolation testing as specified in subsection (F):

i. To augment another method of subsurface characterization if useful to locate or design an on-site wastewater treatment facility, or

ii. As the sole method of subsurface characterization if a subsurface characterization by an ASTM method is not required under subsection (D)(3)(b).

E. If an ASTM method is used for subsurface characterization, the investigator shall conduct subsurface characterization tests at the site to provide adequate, credible, and representative information to ensure proper location, selection, design, and installation of the on-site wastewater treatment facility. The investigator shall:

1. Select at least two test locations in the primary area and one test location in the reserve area to conduct the tests;
2. Perform the characterization at each test location at appropriate depths to:
   a. Establish the wastewater absorption capacity of the soil under R18-9-A312(D), and
   b. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment; and
3. Submit with the site investigation report:
   a. A log of soil formations for each test location with information on soil type, texture, and classification; percentage of rock; structure; consistence; and mottles;
   b. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
   c. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(b), sufficient to allow location and design of the on-site wastewater treatment facility.

F. Percolation testing method for subsurface characterization.

1. Planning and preparation. The investigator shall:
   a. Select at least two locations in the primary area and at least one location in the reserve area for percolation testing, to provide adequate and credible information to ensure proper location, selection, design, and installation of a properly working on-site wastewater treatment facility;
   b. Perform percolation testing at each location at intervals in the soil profile sufficient to:
      i. Establish the wastewater absorption capability of the soil under R18-9-A312(D), and
      ii. Aid in determining that a sufficient zone of unsaturated flow is provided below the disposal works to achieve necessary wastewater treatment. The investigator shall perform percolation tests at multiple depths if there is an indication of an obvious change in soil characteristics that affect the location, selection, design, installation, or disposal performance of the on-site wastewater treatment facility;
   c. Excavate percolation test holes in undisturbed soil at least 12 inches deep with dimensions of 12 inches by 12 inches, if square, or a diameter of 15 inches, if round. The investigator shall not alter the structure of the soil during the excavation;
   d. Place percolation test holes away from site or soil features that yield unrepresentative or misleading data pertaining to the location, selection, design, installation, or performance of the on-site wastewater treatment facility;
   e. Scarify smeared soil surfaces within the percolation test holes and remove any loosened materials from the bottom of the hole; and
   f. Use buckets with holes in the sides to support the sidewalls of the percolation test hole, if necessary. The investigator shall fill any voids between the walls of the hole and the bucket with pea gravel to reduce the impact of the enlarged hole.
2. Presoaking procedure. The investigator shall:
   a. Fill the percolation test hole with clean water to a depth of 12 inches above the bottom of the hole;
   b. Observe the decline of the water level in the hole and record time in minutes for the water to completely drain away;
   c. Repeat the steps specified in subsection (F)(2)(a) and (b) if the water drains away in less than 60 minutes.
      i. If the water drains away the second time in less than 60 minutes, the investigator shall repeat the steps specified in subsections (F)(2)(a) and (b).
      ii. If the water drains away a third time in less than 60 minutes, the investigator shall perform the percolation test by following subsection (F)(3); and
   d. Add clean water to the hole after 60 minutes and maintain the water at a minimum depth of 9 inches for at least four more hours if it takes 60 minutes or longer for the water to drain away. The investigator shall protect the hole from precipitation and runoff, and perform the percolation test specified in subsection (F)(3) between 16 and 24 hours after presoaking.

3. Conducting the test. The investigator shall:
   a. Conduct the percolation test before soil hydraulic conditions established by the presoaking procedure substantially change. The investigator shall remove loose materials in the percolation test hole to ensure that the specified dimensions of the hole are maintained and the infiltration surfaces are undisturbed native soil;
   b. Fill the test hole to a depth of six inches above the bottom with clean water;
   c. Observe the decline of the water level in the test hole and record the time in minutes for the water level to fall exactly 1 inch from a fixed reference point. The investigator shall:
      i. Immediately refill the hole with clean water to a depth of 6 inches above the bottom, and determine and record the time in minutes for the water level to fall exactly 1 inch,
      ii. Refill the hole again with clean water to a depth of 6 inches above the bottom and determine and record the time in minutes for the water to fall exactly 1 inch, and
      iii. Ensure that the method for measuring water level depth is accurate and does not significantly affect the percolation rate of the test hole;
   d. If the percolation rate stabilizes for three consecutive measurements by varying no more than 10 percent, use the highest percolation rate value of the three measurements. If three consecutive measurements indicate that the percolation rate results are not stabilizing or the percolation rate is between 60 and 120 minutes per inch, the investigator shall use an alternate method based on a graphical solution of the test data to approximate the stabilized percolation rate;
   e. Record the percolation rate results in minutes per inch; and
   f. Submit the following information with the site investigation report:
      i. A log of the soil formations encountered for all percolation tests including information on texture, structure, consistence, percentage of rock fragments, and mottles, if present;
      ii. Whether and which test hole was reinforced with a bucket;
      iii. The locations, depths, and bottom elevations of the percolation test holes on the site investigation map;
      iv. A determination of depth to groundwater below the land surface by test trenches or borings, published groundwater data, subdivision reports, or relevant well data; and
      v. A determination of the water absorption characteristics of the soil, under R18-9-A312(D)(2)(a), sufficient to allow location and design of the on-site wastewater treatment facility.

G. Seepage pit performance testing method for subsurface characterization. The investigator shall test seepage pits described in R18-9-E302 as follows:
1. Planning and Preparation. The investigator shall:
   a. Identify the disposal areas at the site and drill a test hole at least 18 inches in diameter to the depth of the proposed seepage pit, at least 30 feet deep, and
   b. Scarify soil surfaces within the test hole and remove loosened materials from the bottom of the hole.
2. Presoaking procedure. The investigator shall:
   a. Fill the bottom 6 inches of the test hole with gravel, if necessary, to prevent scouring;
   b. Fill the test hole with clean water up to 3 feet below the land surface;
   c. Observe the decline of the water level in the hole and determine the time in hours and minutes for the water to completely drain away;
   d. Repeat the procedure if the water drains away in less than four hours; If the water drains away the second time in less than four hours, the investigator shall conduct the seepage pit performance test by following subsection (G)(3);
   e. Add water to the hole and maintain the water at a depth that leaves at least the top 3 feet of hole exposed to air for at least four more hours if the water drains away in four or more hours; and
   f. Not remove the water from the hole before the seepage pit performance test if there is standing water in the hole after at least 16 hours of presoaking.
3. Conducting the test. The investigator shall:
   a. Fill the test hole with clean water up to 3 feet below land surface;
   b. Observe the decline of the water level in the hole and determine and record the vertical distance to the water level from a fixed reference point every 10 minutes. The investigator shall ensure that the method for measuring water level depth is accurate and does not significantly affect the rate of fall of the water level in the test hole;
   c. Measure the decline of the water level continually until three consecutive 10-minute measurements indicate that the infiltration rates are within 10 percent. If measurements indicate that infiltration is not approaching a steady rate or if the rate is close to a numerical limit specified in R18-9-A312(E)(1), the investigator shall use, an alternate method based on a graphical solution of the test data to approximate the final stabilized infiltration rate;
   d. Percolation test rate. Calculate the stabilized infiltration rate for a seepage pit determined by the test hole procedure specified in subsection (G)(1)(a) using the formula P = (15 / DS) x IS to determine an equivalent percolation test rate. Once "P" is determined, the investigator shall use R18-9-A312(D)(2)(a) to establish the design SAR for wastewater treated under R18-9-E302 and to calculate the required minimum sidewall area for the seepage pit using the equation specified in R18-9-E302(C)(5)(k).
      i. "P" is the percolation test rate (minutes per inch) tabulated in the first column of the table in R18-9-A312(D)(2)(a),
      ii. "DS" is the diameter of the seepage pit test hole in inches, and
      iii. "IS" is the seepage pit stabilized infiltration rate (minutes per inch) determined by the procedure specified in R18-9-A310(F)(3)(c);
   e. Submit the following information with the site investigation report:

i. The results of the seepage pit performance testing including data, calculations, and findings on a form provided by the Department;
ii. The log of the test hole indicating lithologic characteristics and points of change;
iii. The location of the test hole on the site investigation map;
iv. A determination of depth to groundwater below the land surface by borings, published groundwater data, subdivision reports, or relevant well data.

f. Fill the test hole so that groundwater quality and public safety are not compromised if the seepage pit is drilled elsewhere or if a seepage pit cannot be sited at the location because of unfavorable test results.

H. Qualifications. An investigator shall not perform a site investigation under this Section unless the investigator has knowledge and competence in the subject area and is licensed in good standing or otherwise qualified in one of the following categories:
1. Arizona-registered professional engineer,
2. Arizona-registered geologist,
3. Arizona-registered sanitarian,
4. A certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section, or
5. Qualifies under another category designated in writing by the Department.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A311. Facility Selection for Type 4 On-site Wastewater Treatment Facilities

A. A person shall select, design, and install an on-site wastewater treatment facility that is appropriate for the site's geographic location, setback limitations, slope, topography, drainage and soil characteristics, wastewater infiltration capability, depth to the seasonal high water table, and any surface or subsurface limiting condition.
1. A person may use on-site treatment and disposal technologies covered by a Type 4 General Permit alone or in combination with another Type 4 General Permit to overcome site limitations.
2. An applicant may submit a single Notice of Intent to Discharge for an on-site wastewater treatment facility consisting of components or technologies covered by multiple general permits if the information submittal requirements of all the general permits are met.
3. The Director shall issue a single Construction Authorization under R18-9-A301(D)(1) and a single Discharge Authorization under R18-9-A301(D)(2) for an on-site wastewater treatment facility that consists of components or technologies covered by multiple general permits.

B. A person may install a septic tank and disposal works system described in R18-9-E302 as the sole method of wastewater treatment and disposal at a site if the site investigation conducted under R18-9-A310 indicates that no limiting condition identified under R18-9-A310(C) or R18-9-A310(D) exists at the site.
1. A person may install a seepage pit only in valley-fill sediments in a basin-and-range alluvial basin and only if the seepage pit performance test results meet the criteria specified in R18-9-A312(E).
2. The person shall specify in the Notice of Intent to Discharge that no limiting conditions described in R18-9-A310(C) and (D) were identified at the site.

C. If any surface or subsurface limiting condition is identified in the site investigation report, an applicant may propose installation of a septic tank and disposal works system described in R18-9-E302 only if:
1. The applicant submits information under R18-9-A312(G) that describes:
   a. How the design of the septic tank and disposal works system specified in R18-9-E302 was modified to overcome limiting conditions;
   b. How the modified design meets the criteria of R18-9-A312(G)(3); and
   c. A site-specific SAR under R18-9-A312(D)(2)(a) or (b), as applicable; and
2. None of the following surface or subsurface limiting conditions are identified at the site:
   a. An outcropping of rock that cannot be excavated or will impair the function of soil receiving the discharge exists in the intended location of the on-site wastewater treatment facility, as described in R18-9-A310(C)(2)(e);
   b. The vertical separation distance from the bottom of the lowest point of the disposal works to the seasonal high water table is less than the minimum vertical separation distance, as described in R18-9-A310(D)(2)(c); or
   c. A subsurface condition that promotes accelerated downward movement of insufficiently treated wastewater as described in R18-9-A310(D)(2)(e).

D. If a site can accommodate a septic tank and disposal works system described in R18-9-E302, the applicant shall not install a treatment works or disposal works described in R18-9-E303 through R18-9-E322 unless the applicant submits a statement to the Department with the Notice of Intent to Discharge acknowledging the following:
1. The applicant is aware that although a septic tank and disposal works system described in R18-9-E302 is appropriate for the site, the applicant desires to install a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322; and
2. The applicant is aware that a treatment works or disposal works authorized under R18-9-E303 through R18-9-E322 may result in higher capital, operation, and maintenance costs than a septic tank and disposal works system described in R18-9-E302.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A312. Facility Design for Type 4 On-site Wastewater Treatment Facilities

A. General design requirements. An applicant shall ensure that the person designing an on-site wastewater treatment facility:
1. Signs the design documents submitted as part of the Notice of Intent to Discharge to obtain a Construction

Authorization, including plans, specifications, drawings, reports, and calculations; and

2. Locates and designs the on-site wastewater treatment facility project using good design judgment and relies on appropriate design methods and calculations.

B. Design considerations and flow determination. An applicant shall ensure that the person designing the on-site wastewater treatment facility shall:

1. Design the facility to satisfy a 20-year operational life;
2. Design the facility based on the provisions of one or more of the general permits in R18-9-E302 through R18-9-E322 for facilities with a design flow of less than 3000 gallons per day, and R18-9-E323 for facilities with a design flow of 3000 gallons per day to less than 24,000 gallons per day;
3. Design the facility based on the facility's design flow and wastewater characteristics as specified in R18-9-A309(B)(3);
4. For on-site wastewater treatment facilities permitted under R18-9-E303 through R18-9-E323, apply the following design requirements, as applicable:
   a. Include the power source and power components in construction drawings if electricity or another type of power is necessary for facility operation;
   b. If a hydraulic analysis is required under subsection (E), perform the analysis based on the location and dimensions of the bottom and sidewall surfaces of the disposal works that are identified in the design documentation;
   c. Design components, piping, ports, seals, and appurtenances to withstand installation loads, internal and external operational loads, and buoyant forces. Design ports for resistance against movement, and cap or cover openings for protection from damage and entry by rodents, mosquitoes, flies, or other organisms capable of transporting a disease-causing organism;
   d. Design tanks, liners, ports, seals, piping to and within the facility, and appurtenances for watertightness under all operational conditions;
   e. Provide adequate storage capacity above high operating level to:
      i. Accommodate a 24-hour power or pump outage, and
      ii. Contain wastewater that is incompletely treated or cannot be released by the disposal works to the native soil;
   f. If a fixed media process is used, provide in the construction drawings the media material, installation specification, media configuration, and wastewater loading rate of the media at the daily design flow;
   g. Provide a fail-safe wastewater control or operational process, if required by the general permit to prevent discharge of inadequately treated wastewater; and
   h. Reference design. If using a reference design on file with the Department, indicate the reference design within the information submitted with the Notice of Intent to Discharge.

C. Setbacks. The following setbacks apply unless the Department:

1. Specifies alternative setbacks under Article 3, Part E of this Chapter;
2. Approves a different setback under the procedure specified in subsection (G); or
3. Establishes a more stringent setback on a site- or area-specific basis to ensure compliance with water quality standards.

Features Requiring Setbacks	Setback For An On-Site Wastewater Treatment Facility, Including Reserve Area (In Feet)	Special Provisions
1. Building	10	Includes porches, decks, and steps (covered or uncovered), breezeways, roofed patios, carports, covered walks, and similar structures and appurtenances.
2. Property line shared with any adjoining lot or parcel not served by a common drinking water system* or an existing water well	50	A person may reduce the setback to a minimum of 5 feet from the property line if: a. The owners of any affected undeveloped adjacent properties agree, as evidenced by an appropriately recorded document, to limit the location of any new well on their property to at least 100 feet from the proposed treatment works and primary and reserve disposal works; and b. The arrangements and documentation are approved by the Department.
3. All other property lines	5	None
4. Public or private water supply well	100	None
5. Perennial or intermittent stream	100	Measured horizontally from the high water line of the peak streamflow from a 10-year, 24-hour rainfall event.
6. Lake, reservoir, or canal	100	Measured horizontally from the high water line from a 10-year, 24-hour rainfall event at the lake or reservoir.

7. Drinking water intake from a surface water source (includes an open water body, downslope spring or a well tapping streamside saturated alluvium)	200	Measured horizontally from the on-site wastewater treatment facility to the structure or mechanism for withdrawing raw water such as a pipe inlet, grate, pump, intake or diversion box, spring box, well, or similar structure.
8. Wash or drainage easement with a drainage area of more than 20 acres	50	Measured horizontally from the nearest edge of the defined natural channel bank or drainage easement boundary. A person may reduce the setback to 25 feet if natural or constructed erosion protection is approved by the appropriate flood plain administrator.
9. Water main or branch water line	10	None
10. Domestic service water line	5	Measured horizontally between the water line and the wastewater pipe, except that the following are allowed: a. A water line may cross above a wastewater pipe if the crossing angle is between 45 and 90 degrees and the vertical separation distance is 1 foot or more. b. A water line may parallel a wastewater pipe with a horizontal separation distance of 1 foot to 5 feet if the bottom of the water line is 1 foot or more above the top of the wastewater pipe and is in a separate trench or on a bench in the same trench.
11. Downslopes or cut banks greater than 15 percent, culverts, and ditches from:		
a. Treatment works components	10	Measured horizontally from the bottom of the treatment works component to the closest point of daylighting on the surface.
b. Trench, bed, chamber technology, or gravelless trench with:		Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
i. No limiting subsurface condition specified in R18-9-A310(D)(2),	20	
ii. A limiting subsurface condition.	50	
c. Subsurface drip lines.	3	Measured horizontally from the bottom of the lowest point of the disposal pipe or drip lines, as applicable, to the closest point of daylighting on the surface.
12. Driveway	5	Measured horizontally to the nearest edge of an on-site wastewater treatment facility excavation. A person may place a properly reinforced and protected wastewater treatment facility, except for disposal works, at any location relative to a driveway if access openings, risers, and covers carry the design load and are protected from inflow.
13. Swimming pool excavation	5	Except if soil loading or stability concerns indicate the need for a greater separation distance.
14. Easement (except drainage easement)	5	None
15. Earth fissures	100	None
* A "common drinking water system" means a system that currently serves or is under legal obligation to serve the property and may include a drinking water utility, a well-sharing agreement, or other viable water supply agreement.		

D. Soil absorption rate (SAR) and disposal works sizing.

1. An applicant shall determine the soil absorption area by dividing the design flow by the applicable soil absorption rate. If soil characterization and percolation test methods yield different SAR values or if multiple applications of the same approach yield different values, the designer of the disposal works shall use the lowest SAR value unless a higher SAR value is proposed and justified to the Department's satisfaction in the Notice of Intent to Discharge.
2. The SAR used to calculate disposal works size for systems described in R18-9-E302 is as follows:
   a. The SAR by percolation testing as described in R18-9-A310(F) is determined as follows:

Percolation Rate from Percolation Test (minutes per inch)	SAR, Trench, Chamber, and Pit (gal/day/ft^2)	SAR, Bed (gal/day/ft^2)
Less than 1.00	A site-specific SAR is required	A site-specific SAR is required
1.00 to less than 3.00	1.20	0.93
3.00	1.10	0.73
4.00	1.00	0.67
5.00	0.90	0.60
7.00	0.75	0.50
10.0	0.63	0.42
15.0	0.50	0.33
20.0	0.44	0.29
25.0	0.40	0.27
30.0	0.36	0.24
35.0	0.33	0.22
40.0	0.31	0.21
45.0	0.29	0.20
50.0	0.28	0.19
55.0	0.27	0.18
55.0+ to 60.0	0.25	0.17
60.0+ to 120	0.20	0.13
Greater than 120	A site-specific SAR is required	A site-specific SAR is required

   b. The SAR using the soil evaluation method described in R18-9-A310(E) is determined by answering the questions in the following table. The questions are read in sequence starting with "A." The first "yes" answer determines the SAR.

Sequence of Soil Characteristics Questions	SAR, Trench, Chamber, and Pit gal/day/ft^2	SAR, Bed gal/day/ft^2
A. Is the horizon gravelly coarse sand or coarser?	A site-specific SAR is required	A site-specific SAR is required
B. Is the structure of the horizon moderate or strongly platy?	A site-specific SAR is required	A site-specific SAR is required
C. Is the texture of the horizon sandy clay loam, clay loam, silty clay loam, or finer and the soil structure weak platy?	A site-specific SAR is required	A site-specific SAR is required
D. Is the moist consistency stronger than firm or any cemented class?	A site-specific SAR is required	A site-specific SAR is required
E. Is the texture sandy clay, clay, or silty clay of high clay content and the structure massive or weak?	A site-specific SAR is required	A site-specific SAR is required
F. Is the texture sandy clay loam, clay loam, silty clay loam, or silty loam and the structure massive?	A site-specific SAR is required	A site-specific SAR is required
G. Is the texture of the horizon loam or sandy loam and the structure massive?	0.20	0.13
H. Is the texture sandy clay, clay, or silty clay of low clay content and the structure moderate or strong?	0.20	0.13
I. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure weak?	0.20	0.13
J. Is the texture sandy clay loam, clay loam, or silty clay loam and the structure moderate or strong?	0.40	0.27
K. Is the texture sandy loam, loam, or silty loam and the structure weak?	0.40	0.27
L. Is the texture sandy loam, loam, or silt loam and the structure moderate or strong?	0.60	0.40
M. Is the texture fine sand, very fine sand, loamy fine sand, or loamy very fine sand?	0.40	0.27
N. Is the texture loamy sand or sand?	0.80	0.53
O. Is the texture coarse sand?	1.20	A site-specific SAR is required

3. For an on-site wastewater treatment facility described in a general permit other than R18-9-E302, the SAR is dependent on the ability of the facility to reduce the level of TSS and BOD_5 and is calculated using the following formula:

$$SAR_a = \left[\left(\frac{11.39}{\sqrt[3]{TSS + BOD_5}} - 1.87\right) SAR^{1.13} + 1\right] SAR$$

   a. "SAR_a" is the adjusted soil absorption rate for disposal works design in gallons per day per square foot,
   b. "TSS" is the total suspended solids in wastewater delivered to the disposal works in milligrams per liter,
   c. "BOD_5" is the five-day biochemical oxygen demand of wastewater delivered to the disposal works in milligrams per liter, and
   d. "SAR" is the soil absorption rate for septic tank effluent determined by the subsurface characterization method described in R18-9-A310.

4. An applicant shall ensure that the facility is designed so that the area of the intended installation is large enough to allow for construction of the facility and for future replacement or repair and is at least as large as the following:
   a. For a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works. A reserve area is not required for a lot in a subdivision approved before 1974 if the lot conforms to its original approved configuration;
   b. For other than a dwelling, a primary area for the disposal works sized according to subsection (D)(1) and a reserve area of 100 percent of the primary area, excluding the footprint of the treatment works.

5. An applicant shall ensure that the subsurface disposal works is designed to achieve the design flow established in R18-9-A309(B)(3) through proper hydraulic function, including conditions of seasonally cold and wet weather.

E. Vertical separation distances.

1. Minimum vertical separation to the seasonal high water table for a disposal works described in R18-9-E302 receiving septic tank effluent. For a disposal works described in R18-9-E302 receiving septic tank effluent, the minimum vertical separation distance between the lowest point in the disposal works and the seasonal high water table is dependent on the soil absorption rate and is determined as follows:

Soil Absorption Rate (gallons per day per square foot)			**Minimum Vertical Separation Between The Bottom Of The Disposal Works And The Seasonal High Water Table (feet)**	
Trench and Chamber	Bed	Seepage Pit	Trench, Chamber, and Bed	Seepage Pit
1.20+	0.93+	1.20+	Not allowed for septic tank effluent	Not Allowed
0.63+ to 1.20	0.42 to 0.93	0.63+ to 1.20	10	60
0.20 to 0.63	0.13 to 0.42	0.36 to 0.63	5	60
Less than 0.20	Less than 0.13	Less than 0.36	Not allowed for septic tank effluent	Not Allowed

2. Minimum vertical separation to the seasonal high water table for treatment and disposal works described in R18-9-E303 through R18-9-E322. If the minimum vertical separation distance to the seasonal high water table for a disposal works receiving septic tank effluent specified in subsection (E)(1) is not met, the applicant shall comply with the following:
   a. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml) delivered to native soil at the bottom of the disposal works. The applicant shall use the following table to select works that achieve a reduced total coliform concentration corresponding to the available vertical separation distance between the bottom of the disposal works and the seasonal high water table:

Available Vertical Separation Distance Between the Bottom of The Disposal Works and the Seasonal High Water Table (feet)		**Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Natural Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)**
For SAR*, 0.20 to 0.63	**For SAR*, 0.63+ to 1.20**	
5	10	8**
4	8	7
3.5	7	6
3	6	5
2.5	5	4
2	4	3
1.5	3	2

1	2	1
0	0	0***

* Soil absorption rate from percolation testing or soil characterization, in gallons per square foot per day.

** Nominal value for a standard septic tank and disposal field (10^8 colony forming units per 100 ml).

*** Nominally free of coliform bacteria.

b. Include a hydraulic analysis with the Notice Of Intent To Discharge, based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater downward and laterally without surfacing for the site conditions at the disposal works.

3. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(d) that may cause or contribute to surfacing of wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(d) exists at the location of the disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of acceptable native soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 4 feet thick, and
      ii. The zone of soil is sufficiently permeable to conduct wastewater released from the disposal works vertically downward and laterally without causing surfacing of the wastewater as documented by a hydraulic analysis submitted with the Notice of Intent to Discharge that is based on the dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b);
   b. The subsurface limiting condition is thin enough to allow placement of a disposal works into acceptable native soil beneath the subsurface limiting condition if the following criteria are met:
      i. The bottom of the subsurface limiting condition is not deeper than 10 feet below the land surface, and
      ii. The vertical separation distance from the bottom of the disposal works to the seasonal high water table complies with subsection (E)(1) or (2), as applicable; or
   c. If the disposal works is placed above the subsurface limiting condition and the depth to the subsurface limiting condition is less than 4 feet below the bottom of the disposal works, the design for the on-site wastewater treatment facility shall comply with all of the following:
      i. Employ one or more technologies described in R18-9-E303 through R18-9-E322 to achieve a reduced concentration of harmful microorganisms, expressed as total coliform in colony forming units per 100 milliliters (cfu/100 ml), delivered to acceptable native soil at the bottom of the disposal works, as follows:

Available Vertical Separation Distance from the Bottom of the Disposal Works to the Subsurface Limiting Condition (feet)	Maximum Allowable Total Coliform Concentration, 95th Percentile, Delivered to Acceptable Native Soil by the Disposal Works (Log_{10} of coliform concentration in cfu per 100 milliliters)
3.5	7
3	6
2.5	5
2	4
1.5	0*
1	0*
0.5	0*
0	0*

* Nominally free of coliform bacteria.

      ii. If the SAR of the native soil into which the disposal works is placed is not more than 0.63 gallons per day per square foot, include a hydraulic analysis with the Notice of Intent to Discharge, based on the location and dimensions of the absorption surfaces specified in R18-9-A312(B)(4)(b), showing that the soil is sufficiently permeable to conduct wastewater vertically downward and laterally without surfacing for the site conditions at the disposal works; and
      iii. If a disinfection device under R18-9-E320 is proposed but is not used with surface disposal of wastewater under R18-9-E321 or "Category A" drip irrigation disposal under R18-9-E322, provide a justification with the Notice of Intent to Discharge stating why the selected type of disposal works is favored over disposal under R18-9-E321 or R18-9-E322.

4. Vertical separation from a subsurface limiting condition described in R18-9-A310(D)(2)(e) that promotes accelerated downward movement of insufficiently treated wastewater. If a subsurface limiting condition described in R18-9-A310(D)(2)(e) exists at the location of the proposed disposal works, the applicant shall ensure that the design for the on-site wastewater treatment facility meets one of the following:
   a. A zone of naturally occurring soil with the following characteristics exists between the bottom of the disposal works and the top of the subsurface limiting condition:
      i. The zone of soil is at least 2 feet thick, and
      ii. The SAR of the soil is not less than 0.20 gallons per day per square foot nor more than 1.20 gallons per day per square foot; or
   b. The on-site wastewater treatment facility employs one or more technologies described in R18-9-E303 through R18-9-E322 that produces treated wastewater that meets a total coliform concentration of 1,000,000 ($Log_{10}6$) colony forming units per 100 milliliters, 95th percentile.

F. Materials and manufactured system components.

1. Materials. An applicant shall use aggregate if no specification for disposal works material is provided in this Article.
2. Manufactured components. If manufactured components are used, an applicant shall design, install, and operate the on-site wastewater treatment facility following the manufacturer's specifications. The applicant shall ensure that:
   a. Treatment and containment components, mechanical equipment, instrumentation, and controls have monitoring, inspection, access and cleanout ports or covers, as appropriate, for monitoring and service;
   b. Treatment and containment components, pipe, fittings, pumps, and related components and controls are durable, watertight, structurally sound, and capable of withstanding stress from installation and operational service; and
   c. Distribution lines for disposal works are constructed of clay tile laid with open joints, perforated clay pipe, perforated high density polyethylene pipe, perforated ABS pipe, or perforated PVC pipe if the pipe is suitable for wastewater disposal use and sufficient openings are available for distribution of the wastewater into the trench or bed area.
3. Electronic components. When electronic components are used, the applicant shall ensure that:
   a. Instructions and a wiring diagram are mounted on the inside of a control panel cover;
   b. The control panel is equipped with a multimode operation switch, red alarm light, buzzer, and reset button;
   c. The multimode operation switch operates in the automatic position for normal system operation; and
   d. An anomalous condition is indicated by a glowing alarm light and sounding buzzer. The continued glowing of the alarm light after pressing the reset button shall signal the need for maintenance or repair of the system at the earliest practical opportunity.
4. If a conflict exists between this Article and the manufacturer's specifications, the requirements of this Article apply. Except for the requirements in subsection (D) and (E), which always apply, if the conflict voids a manufacturer's warranty, the applicant may submit a request under subsection (G) justifying use of the manufacturer's specifications.

G. Alternative design, setback, installation, or operational features. When an applicant submits a Notice of Intent to Discharge, the applicant may request that the Department review and approve a feature of improved or alternative technology, design, setback, installation, or operation that differs from a general permit requirement in this Article.
1. The applicant shall make the request for an improved or alternative feature of technology, design, setback, installation, or operation on a form provided by the Department and include:
   a. A description of the requested change;
   b. A citation to the applicable feature or technology, design, setback, installation, or operational requirement for which the change is being requested; and
   c. Justification for the requested change, including any necessary supporting documentation.
2. The applicant shall submit the appropriate fee specified under 18 A.A.C. 14 for each requested change. For purposes of calculating the fee, a requested change that is applied multiple times in a similar manner throughout the facility is considered a single request if submitted for concurrent review.
3. The applicant shall provide sufficient information for the Department to determine that the change achieves equal or better performance compared with the general permit requirement, or addresses site or system conditions more satisfactorily than the requirements of this Article.
4. The Department shall review and may approve the request for change.
5. The Department shall deny the request for the change if the change will adversely affect other permittees or cause or contribute to a violation of an Aquifer Water Quality Standard.
6. The Department shall deny the request for the change if the change:
   a. Fails to achieve equal or better performance compared to the general permit requirement;
   b. Fails to address site or system conditions more satisfactorily than the general permit requirement;
   c. Is insufficiently justified based on the information provided in the submittal;
   d. Requires excessive review time, research, or specialized expertise by the Department to act on the request; or
   e. For any other justifiable cause.
7. The Department may approve a reduced setback for a facility authorized to discharge under one or more of the general permits in R18-9-E303 through R18-9-E322, either separately or in combination with a septic tank system authorized under R18-9-E302, if the applicant demonstrates that:
   a. The treatment performance is significantly better than that provided under R18-9-E302(B),
   b. The wastewater loading rate is reduced, or
   c. Surface or subsurface characteristics ensure that reduced setbacks are protective of human health or water quality.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (E)(1) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A313. Facility Installation, Operation, and Maintenance for On-site Wastewater Treatment Facilities

A. Facility installation. In addition to installation requirements in the general permit, the applicant shall ensure that the following tasks are performed, as applicable:
1. The facility is installed as described in design documents submitted with the Notice of Intent to Discharge;
2. Components are installed on a firm foundation that supports the components and operating loads;
3. The site is prepared to protect native soil beneath the soil absorption area and in adjacent areas from compaction, prevent smeared absorption surfaces, minimize disturbances from grubbing, and otherwise preclude damage to the disposal area that would impair performance;
4. Components are protected from damage at the construction site and installed in conformance with the manufacturer's instructions if consistent with this Article;
5. Treatment media are placed to achieve uniform density, prevent differential settling, produce a level inlet surface

unless otherwise specified by the manufacturer, and avoid introduction of construction contaminants;

6. Backfill is placed to prevent damage to geotextile, liners, tanks, and other components;
7. Soil cover is shaped to shed rainfall away from the backfill areas and prevent ponding of runoff; and
8. Anti-buoyancy measures are implemented during construction if temporary saturated backfill conditions are anticipated during construction.

B. Operation and maintenance. In addition to operation and maintenance requirements in the general permit or specified in the operation and maintenance manual, the permittee shall ensure that the following tasks are performed, as applicable:

1. Pump accumulated residues, inspect and clean wastewater treatment and distribution components, and manage residues to protect human health and the environment;
2. Clean, backwash, or replace effluent filters according to the manufacturer's instructions, and manage residues to protect human health and the environment;
3. Inspect and clean the effluent baffle screen and pump tank, and properly dispose of cleaning residue;
4. Clean the dosing tank effluent screen, pump switches, and floats, and properly dispose of cleaning residue;
5. Flush lateral lines and return flush water to the pretreatment headworks;
6. Inspect, remove and replace, if necessary, and properly dispose of filter media;
7. Rod pressurized wastewater delivery lines and secondary distribution lines (for dosing systems), and return cleaning water to the pretreatment headworks;
8. Inspect and clean pump inlets and controls and return cleaning water to the pretreatment headworks;
9. Implement corrective measures if anomalous ponding, dryness, noise, odor, or differential settling is observed;
10. Inspect and monitor inspection and access ports, as applicable, to verify that operation is within expected limits for:
    a. Influent wastewater quality;
    b. The pressurized dosing system;
    c. The aggregate infiltration bed and mound system;
    d. Wastewater delivery and the engineered pad;
    e. The pressurized delivery system, filter, underdrain, and native soil absorption system;
    f. Saturation condition status in peat and other media; and
    g. Treatment system components;
11. Inspect tanks, liners, ports, seals, piping, and appurtenances for watertightness under all operational conditions;
12. Manage vegetation in areas that contain components subject to physical impairment or damage due to root invasion or animals;
13. Maintain drainage, berms, protective barriers, cover materials, and other features; and
14. Maintain the usefulness of the reserve area to allow for repair or replacement of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A314. Septic Tank Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A person shall not install a septic tank in an on-site wastewater treatment facility unless the tank meets the following requirements:

1. The tank is:
    a. Designed to produce a clarified effluent and provide adequate space for sludge and scum accumulations;
    b. Watertight and constructed of solid durable materials not subject to excessive corrosion or decay;
    c. Manufactured with at least two compartments unless two separate structures are placed in series. The tank is designed so that:
        i. The inlet compartment of any septic tank not placed in series is nominally 67 percent to 75 percent of the total required capacity of the tank,
        ii. Septic tanks placed in series are considered a unit and meet the same criteria as a single tank,
        iii. The liquid depth of the septic tank is at least 42 inches, and
        iv. A septic tank of 1000 gallon capacity is at least 8 feet long and the tank length of septic tanks of greater capacity is at least 2 times but not more than 3 times the width;
    d. Manufactured with at least two access openings to the tank interior, each at least 20 inches in diameter. The tank is designed so that:
        i. One access opening is located over the inlet end of the tank and one access opening is located over the outlet end;
        ii. Whenever a first compartment exceeds 12 feet in length, another access opening is provided over the baffle wall; and
        iii. Access openings and risers are constructed to ensure accessibility within 6 inches below finished grade;
    e. Manufactured so that the sewage inlet and wastewater outlet openings are not smaller than the connecting sewer pipe. The tank is designed so that:
        i. The vertical leg of round inlet and outlet fittings is at least 4 inches but not smaller than the connecting sewer pipe, and
        ii. A baffle fitting has the equivalent cross-sectional area of the connecting sewer pipe and not less than a 4 inch horizontal dimension if measured at the inlet and outlet pipe inverts;
    f. Manufactured so that the inlet and outlet pipe or baffle extends 4 inches above and at least 12 inches below the water surface when the tank is installed according to the manufacturer's instructions consistent with this Chapter. The invert of the inlet pipe is at least 2 inches above the invert of the outlet pipe;
    g. Manufactured so that the inlet and outlet fittings or baffles and compartment partitions have a free vent area equal to the required cross-sectional area of the connected sewer pipe to provide free ventilation above the water surface from the disposal works or seepage pit through the septic tank, house sewer, and stack to the outer air;
    h. Manufactured so that the open space extends at least 9 inches above the liquid level and the cover of the septic tank is at least 2 inches above the top of the inlet fitting vent opening;
    i. Manufactured so that partitions or baffles between compartments are of solid durable material (wooden

baffles are prohibited) and extend at least 4 inches above the liquid level. The open area of the baffle shall be between one and 2 times the open area of the inlet pipe or horizontal slot and located at the midpoint of the liquid level of the baffle. If a horizontal slot is used, the slot shall be no more than 6 inches in height;

j. Structurally designed to withstand all anticipated earth or other loads. The tank is designed so that:
   i. All septic tank covers are capable of supporting an earth load of 300 pounds per square foot; and
   ii. If the top of the tank is greater than 2 feet below finish grade, the septic tank and cover are capable of supporting an additional load of 150 pounds per square foot for each additional foot of cover;

k. Manufactured or installed so that the influent and effluent ends of the tank are clearly and permanently marked on the outside of the tank with the words "INLET" or "IN," and "OUTLET" or "OUT," above or to the right or left of the corresponding openings; and

l. Clearly and permanently marked with the manufacturer's name or registered trademark, or both, the month and year of manufacture, the maximum recommended depth of earth cover in feet, and the design liquid capacity of the tank. The tank is manufactured to protect the markings from corrosion so that they remain permanent and readable for the operational life of the tank.

2. Materials used to construct or manufacture septic tanks.
   a. A septic tank cast-in-place at the site of use shall be protected from corrosion by coating the tank with a bituminous coating, by constructing the tank using a concrete mix that incorporates 15 percent to 18 percent fly ash, or by any other Department-approved means. The tank is designed so that:
      i. The coating extends at least 4 inches below the wastewater line and covers all of the internal area above that point; and
      ii. A septic tank cast-in-place complies with the "Building Code Requirements for Structural Concrete and Commentary ACI 318-02/318R-02 (2002)," and the "Code Requirements for Environmental Engineering Concrete Structures and Commentary, ACI 350/350R-01 (2001)," published by the American Concrete Institute. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from American Concrete Institute, P.O. Box 9094, Farmington Hills, MI 48333-9094.
   b. A steel septic tank shall have a minimum wall thickness of No. 12 U.S. gauge steel and be protected from corrosion, internally and externally, by a bituminous coating or other Department-approved means.
   c. A prefabricated concrete septic tank shall meet the "Standard Specification for Precast Concrete Septic Tanks, C1227-03," published by the American Society for Testing and Materials. This information is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International West.
   d. A septic tank manufactured using fiberglass or polyethylene shall meet the "Material and Property Standards for Prefabricated Septic Tanks, IAPMO PS 1-2004," published by the International Association of Plumbing and Mechanical Officials. This information is incorporated by reference, does not include any later amendments or editions of the incorporated material, and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007 or obtained from International Association of Plumbing & Mechanical Officials, 20001 E. Walnut Drive, South Walnut, CA 91789-2825.
3. Conformance with design, materials, and manufacturing requirements.
   a. If any conflict exists between this Article and the information incorporated by reference in subsection (2), the requirements of this Article apply.
   b. The Department may approve use of alternative construction materials under R18-9-A312(G). Tanks constructed of wood, block, or bare steel are prohibited.
   c. The Department may inspect septic tanks at the site of manufacturing to verify compliance with subsections (1) and (2).
   d. The septic tank sale documentation includes:
      i. A certificate attesting that the septic tank conforms with the design, materials, and manufacturing requirements in subsections (1) and (2); and
      ii. Instructions for handling and installing the septic tank.
4. The septic tank's daily design flow is determined as follows:
   a. For a single family dwelling:
      i. The design liquid capacity of the septic tank and the septic tank's daily design flow are determined based on the number of bedrooms and fixture count as follows:

Criteria for Septic Tank Size and Design Flow

Number of Bedrooms	Fixture Count	Minimum Design Liquid Capacity (gallons)	Design Flow (gal/day)
1	7 or less	1000	150
	More than 7	1000	300
2	14 or less	1000	300
	More than 14	1000	450
3	21 or less	1000	450
	More than 21	1250	600
4	28 or less	1250	600
	More than 28	1500	750

5	35 or less	1500	750
	More than 35	2000	900
6	42 or less	2000	900
	More than 42	2500	1050
7	49 or less	2500	1050
	More than 49	3000	1200
8	56 or less	3000	1200
	More than 56	3000	1350

ii. Fixture count is determined as follows:

Residential Fixture Type	Fixture Units	Residential Fixture Type	Fixture Units
Bathtub	2	Sink, bar	1
Bidet	2	Sink, kitchen (including dishwasher	2
Clothes washer	2	Sink, service	3
Dishwasher (Separate from kitchen)	2	Utility tub or sink	2
Lavatory, single	1	Water closet, 1.6 gallons per flush (gpf)	3
Lavatory, double in master bedroom	1	Water closet, >1.6 to 3.2 gpf	4
Shower, single stall	2	Water closet, greater than 3.2 gpf	6

b. For other than a single family dwelling, the design liquid capacity of a septic tank in gallons is 2.1 times the daily design flow into the tank as determined from Table 1, Unit Design Flows. If the wastewater strength exceeds that of typical sewage, additional tank volume is required.

c. A person may place two septic tanks in series to meet the septic tank design liquid capacity requirements if the capacity of the first tank is at least 67 percent of the total required tank capacity and the capacity of the second tank is at least 33 percent of the total required tank capacity.

5. The following requirements regarding new or replacement septic tank installation apply:
   a. Permanent surface markers for locating the septic tank access openings are provided for maintenance;
   b. A septic tank installed under concrete or pavement has the required access openings extended to grade;
   c. A septic tank effluent filter is installed on the septic tank. The filter shall:
      i. Prevent the passage of solids larger than 1/8 inch in diameter while under two feet of hydrostatic head; and
      ii. Be constructed of materials that are resistant to corrosion and erosion, sized to accommodate hydraulic and organic loading, and removable for cleaning and maintenance; and
   d. The septic tank is tested for watertightness after installation by the water test described in subsections (5)(d)(i) and (5)(d)(ii) and repaired or replaced, if necessary.
      i. The septic tank is filled with clean water, as specified in R18-9-A310(A), to the invert of the outlet and the water left standing in the tank for 24 hours and:
         (1) After 24 hours, the tank is refilled to the invert, if necessary;
         (2) The initial water level and time is recorded; and
         (3) After one hour, water level and time is recorded.
      ii. The tank passes the water test if the water level does not drop over the one-hour period. Any visible leak of flowing water is considered a failure. A damp or wet spot that is not flowing is not considered a failure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A315. Interceptor Design, Manufacturing, and Installation for On-site Wastewater Treatment Facilities

A. Interceptor requirement. An applicant shall ensure that an interceptor as required by R18-9-A309(A)(7)(c) or necessary due to excessive amounts of grease, garbage, sand, or other wastes in the sewage is installed between the sewage source and the on-site wastewater treatment facility.

B. Interceptor design. An applicant shall ensure that:
1. An interceptor has not less than two compartments with fittings designed for grease retention and capable of removing excessive amounts of grease, garbage, sand, or other wastes. Applicable structural and materials requirements prescribed in R18-9-A314 apply;
2. Interceptors are located as close to the source as possible and are accessible for servicing. The applicant shall ensure that access openings for servicing are at grade level and gas-tight;
3. The interceptor size for grease and garbage from non-residential kitchens is calculated using by the following equation: Interceptor Size (in gallons) = M × F × T × S.
   a. "M" is the number of meals per peak hour;
   b. "F" is the waste flow rate from Table 1, Unit Design Flows.
   c. "T" is the estimated retention time:
      i. Commercial kitchen waste, dishwasher or disposal: 2.5 hours; or
      ii. Single service kitchen with utensil wash disposal: 1.5 hours;
   d. "S" is the estimated storage factor:
      i. Fully equipped commercial kitchen, 8-hour operation: 1.0;
      ii. Fully equipped commercial kitchen, 16-hour operation: 2.0;
      iii. Fully equipped commercial kitchen, 24-hour operation: 3.0; or
      iv. Single service kitchen, 1.5;
4. The interceptor size for silt and grease from laundries and laundromats is calculated using the following equation: Interceptor Size (in gallons) = M × C × F × T × S.
   a. "M" is the number of machines;
   b. "C" is the machine cycles per hour (assume 2);
   c. "F" is the waste flow rate from Table 1, Unit Design Flows;
   d. "T" is the estimated retention time (assume 2); and

e. "S" is the estimated storage factor (assume 1.5 that allows for rock filter).

C. The applicant may calculate the size of an interceptor using different factor values than those given in subsections (B)(3) and (4) based on the values justified by the applicant in the Notice of Intent to Discharge submitted to the Department for the on-site wastewater treatment facility.

D. The Department may require installation of a sampling box if the volume or characteristics of the waste will impair the performance of the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A316. Transfer of Ownership Inspection for On-site Wastewater Treatment Facilities

A. Conforming with this Section satisfies the Notice of Transfer requirements under R18-9-A304.

B. Within six months before the date of property transfer, the person who is transferring a property served by an on-site wastewater treatment facility shall retain an inspector to perform a transfer of ownership inspection of the on-site wastewater treatment facility who meets the following qualifications:

1. Possesses working knowledge of the type of facility and the inspection process;
2. Holds a certificate of training from a course recognized by the Department as sufficiently covering the information specified in this Section by July 1, 2006; and
3. Holds a license in one of the following categories:
   a. An Arizona-registered engineer;
   b. An Arizona-registered sanitarian;
   c. An owner of a vehicle with a human excreta collection and transport license issued under 18 A.A.C. 13, Article 11 or an employee of the owner of the vehicle;
   d. A contractor licensed by the Registrar of Contractors in one of the following categories:
      i. Residential license B-4 or C-41;
      ii. Commercial license A, A-12, or L-41; or
      iii. Dual license KA or K-41;
   e. A wastewater treatment plant operator certified under 18 A.A.C 5, Article 1; or
   f. A person qualifying under another category designated by the Department.

C. The inspector shall complete a Report of Inspection on a form approved by the Department, sign it, and provide it to the person transferring the property. The Report of Inspection shall:

1. Address the physical and operational condition of the on-site wastewater treatment facility and describe observed deficiencies and repairs completed, if any;
2. Indicate that each septic tank or other wastewater treatment container on the property was pumped or otherwise serviced to remove, to the maximum extent possible, solid, floating, and liquid waste accumulations, or that pumping or servicing was not performed for one of the following reasons:
   a. A Discharge Authorization for the on-site wastewater treatment facility was issued and the facility was put into service within 12 months before the transfer of ownership inspection,
   b. Pumping or servicing was not necessary at the time of the inspection based on the manufacturer's written operation and maintenance instructions, or
   c. No accumulation of floating or settled waste was present in the septic tank or wastewater treatment container; and
3. Indicate the date the inspection was performed.

D. Before the property is transferred, the person transferring the property shall provide to the person to whom the property is transferred:

1. The completed Report of Inspection; and
2. Documents in the person's possession relating to permitting, operation, and maintenance of the on-site wastewater treatment facility.

E. The person to whom the property is transferred shall complete a Notice of Transfer on a form approved by the Department and send the form with the applicable fee specified in 18 A.A.C. 14 within 15 calendar days after the property transfer to:

1. The Department for transfer of a property with an on-site wastewater treatment facility for which construction was completed before January 1, 2001; or
2. The health or environmental agency delegated by the Director to administer the on-site wastewater treatment facility program for transfer of a property with an on-site wastewater treatment facility constructed on or after January 1, 2001.

F. If the Department issued a Discharge Authorization for the on-site wastewater treatment facility but the facility was not put into service before the property transfer, an inspection of the facility is not required and the transferee shall complete the Notice of Transfer form as specified in subsection (E).

G. Effective date.

1. The owner of an on-site wastewater treatment facility operating under a Type 4 General Permit shall comply with this Section by November 12, 2005.
2. The owner of any on-site wastewater treatment facility other than a facility identified in subsection (G)(1) shall comply with this Section by July 1, 2006.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2002 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-A317. Nitrogen Management Area

A. The Director may designate a new Nitrogen Management Area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes and not covered under an individual permit, modify the boundaries or requirements of a Nitrogen Management Area, or rescind designation of a Nitrogen Management Area.

1. If existing conditions or trends in nitrogen loading to an aquifer will cause or contribute to an exceedance of the Aquifer Water Quality Standard for nitrate at a point or points of current or reasonably foreseeable use of the aquifer, the Director shall use the following criteria to determine whether to designate the area as a Nitrogen Management Area:
   a. Population of the area;
   b. The degree to which the area is unsewered;
   c. Gross areal nitrogen loading, calculated as the amount of nitrogen discharged into the subsurface by use of on-site wastewater treatment facilities,

divided by the land area under consideration for designation as a Nitrogen Management Area;

d. Population growth rate of area;

e. Existing contamination of groundwater by nitrogen species;

f. Existing and potential impact to groundwater by sources of nitrogen other than on-site wastewater treatment facilities;

g. Characteristics of the vadose zone and aquifer;

h. Location, number, and areal extent of existing and potential sources of nitrogen;

i. Location and characteristics of existing and potential drinking water supplies; and

j. Any other information relevant to determining the severity of actual or potential nitrogen impact on the aquifer.

2. The Director may modify the boundaries or requirements of a Nitrogen Management Area or rescind designation of a Nitrogen Management Area based on:

a. A material change to one or more criterion specified in subsection (A)(1); or

b. The adoption by a local agency of a master plan to substantially sewer the area as soon as possible, but with a completion deadline within 10 years, unless a completion deadline of more than 10 years is approved by the Director.

B. Preliminary designation, modification, or rescission.

1. The Director shall provide a report to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the Department's proposed action to designate, modify, or rescind a Nitrogen Management Area as follows:

a. If the Department proposes to designate a Nitrogen Management Area, the Department shall provide a report discussing each criterion specified in subsection (A)(1).

b. If the Department proposes to modify the boundaries or requirements of a Nitrogen Management Area or rescind the designation of a Nitrogen Management Area, the Department shall provide a report discussing applicable criteria in subsections (A)(1) and (2).

2. The town, city, county, or sanitary district receiving the Director's report may provide written comments to the Department within 120 days to dispute the factual information presented in the report and supply any information supporting the comments.

3. The Director shall evaluate the comments and supporting information obtained under subsection (B)(2) and either designate, modify, or rescind the Nitrogen Management Area or withdraw the proposal.

C. Final designation.

1. If the Director designates or modifies the Nitrogen Management Area, the Department shall:

a. Issue or modify the Nitrogen Management Area designation and any special provisions established for the area to control groundwater pollution by sources of nitrogen regulated by Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes but not covered under an individual permit. The Department shall provide notice to the mayors and members of the Board of Supervisors of all towns, cities, and counties and the directors of all sanitary districts affected by the determination;

b. Maintain the designation and a map showing the boundaries of the Nitrogen Management Area at the Arizona Department of Environmental Quality, 1110 West Washington, Phoenix, Arizona 85007 and on the Department's web site at www.azdeq.gov; and

c. Provide, upon request, a copy of the Nitrogen Management Area designation and a map of the area.

2. If the Director withdraws the preliminary Nitrogen Management Area designation or rescinds the Nitrogen Management Area designation, the Director shall issue a determination stating the decision and post it on the Department's web site at www.azdeq.gov.

D. Nitrogen Management Area requirements. Within a Nitrogen Management Area:

1. The Department shall issue a Construction Authorization, under R18-9-A301(D)(1)(c), for an on-site wastewater treatment facility only if the applicant proposes, in the Notice of Intent to Discharge, to employ one or more of the technologies allowed under R18-9-E302 through R18-9-E322 that achieves a discharge level containing not more than 15 mg/l of total nitrogen.

2. An agricultural operation shall use the best control measure necessary to reduce nitrogen discharge when implementing the best management practices developed under 18 A.A.C. 9, Article 4. The Director may require the owner or operator to reassess the performance of the impoundment liner systems constructed under R18-9-403 before November 12, 2005.

3. A person shall comply with any special provision established for the Nitrogen Management Area, as applicable, for the person's facility.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART B. TYPE 1 GENERAL PERMITS

R18-9-B301. Type 1 General Permit

A. A 1.01 General Permit allows any discharge of wash water from a sand and gravel operation, placer mining operation, or other similar activity, including construction, foundation, and underground dewatering, if only physical processes are employed and only hazardous substances at naturally occurring concentrations in the sand, gravel, or other rock material are present in the discharge.

B. A 1.02 General Permit allows any discharge from hydrostatic tests of a drinking water distribution system and pipelines not previously used, if all the following conditions are met:

1. The quality of the water used for the test does not exceed an Aquifer Water Quality Standard or for non-drinking water pipelines, if reclaimed water is used, the reclaimed water meets Class A+ Reclaimed Water Quality Standards under A.A.C. R18-11-303 or Class B+ Reclaimed Water Quality Standards under A.A.C. R18-11-305;

2. The discharge is not to a water of the United States, unless the discharge is under an AZPDES permit; and

3. The test site is restored to its natural grade.

C. A 1.03 General Permit allows any discharge from hydrostatic tests of a pipeline, tank, or appurtenance previously used for transmission of fluid, other than those previously used for drinking water distribution systems, if all the following conditions are met:

1. All liquid discharge is contained in an impoundment lined with flexible geomembrane. The liquid is evaporated or removed from the impoundment and taken to a

treatment works or landfill authorized to accept the material within:
a. 60 days of the hydrostatic test if the liner is 10 mils, or
b. 180 days of the hydrostatic test if the liner is 30 mils or greater;
2. The liner is placed over a layer, at least 3 inches thick, of well-sorted sand or finer grained material, or over an underliner that provides protection equal to or better than sand or finer grained material and the calculated seepage is less than 550 gallons per acre per day;
3. The liner is removed and disposed of at an approved landfill unless the liner can be reused at another test location without a reduction in integrity;
4. The test site is restored to its natural grade; and
5. If the test waters are removed using a method not specified in subsection (C)(1), including a discharge under an AZPDES permit, the test waters meet Aquifer Water Quality Standards and the specific method is approved by the Department before the discharge.

D. A 1.04 General Permit allows any discharge from a facility that, for water quality sampling, hydrologic parameter testing, well development, redevelopment, or potable water system maintenance and repair purposes, receives water, drilling fluids, or drill cuttings from a well if the discharge is to the same aquifer in approximately the same location from which the water supply was originally withdrawn, or the discharge is under an AZPDES permit.

E. A 1.05 General Permit allows a discharge to an injection well, surface impoundment, and leach line only if the discharge is filter backwash from a potable water treatment system, condensate from a refrigeration unit, overflows from an evaporative cooler, heat exchange system return water, or swimming pool filter backwash and the discharge is less than 1000 gallons per day. The 1.05 General Permit allows a discharge of those sources to a navigable water if the discharge is authorized by an AZPDES permit.

F. A 1.06 General Permit allows the burial of mining industry off-road motor vehicle waste tires at the mine site in a manner consistent with the cover requirements in R18-13-1203.

G. A 1.07 General Permit allows the operation of dockside facilities and watercraft if the following conditions are met:
1. Docks that service watercraft equipped with toilets provide sanitary facilities at dockside for the disposal of sewage from watercraft toilets. No wastewater from sinks, showers, laundries, baths, or other plumbing fixtures at a dockside facility is discharged into waters of the state;
2. Docks that service watercraft have conveniently located toilet facilities for men and women;
3. No boat, houseboat, or other type of watercraft is equipped with a marine toilet constructed and operated to discharge sewage directly or indirectly into a water of the state, nor is any container of sewage placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of the state by a person;
4. Watercraft with marine toilets constructed to allow sewage to be discharged directly into waters of the state are locked and sealed to prevent usage. Chemical or other type marine toilets with approved storage containers are permitted if dockside disposal facilities are provided; and
5. No bilge water or wastewater from sinks, showers, laundries, baths, or other plumbing fixtures on houseboats or other watercraft is discharged into waters of the state.

H. A 1.08 General Permit allows for any earth pit privy, fixed or transportable chemical toilet, incinerator toilet or privy, or pail or can-type privy if allowed by a county health or environmental department under A.R.S. Title 36 or a delegation agreement under A.R.S. § 49-107.

I. A 1.09 General Permit allows:
1. The operation of:
a. A sewage treatment facility with flows less than 20,000 gallons per day and approved by the Department before January 1, 2001, and
b. An on-site wastewater treatment facility with flows less than 20,000 gallons per day operating before January 1, 2001;
2. The person who owns or operates a facility under subsections (I)(1)(a) or (b) to operate the facility if the following conditions are met:
a. The discharge from the facility does not cause or contribute to a violation of a water quality standard;
b. The owner or operator does not expand the facility to accommodate flows above the design flow or 20,000 gallons per day, whichever is less;
c. The facility only treats typical sewage;
d. The facility does not treat flows from commercial operations using hazardous substances or creating hazardous wastes, as defined in A.R.S. § 49-921(5);
e. The discharge from the facility does not create any environmental nuisance condition listed in A.R.S. § 49-141; or
f. The owner or operator does not alter the treatment or disposal characteristics of the original facility, except as allowed under R18-9-A309(A)(9)(a).

J. A 1.10 General Permit allows the operation of a sewage collection system installed before January 1, 2001 that serves downstream from the point where the daily design flow is 3000 gallons per day or that includes a manhole, force main, or lift station serving more than one dwelling regardless of flow, if:
1. The system complies with the performance standards in R18-9-E301(B),
2. No sewage is released from the sewage collection system to the land surface, and
3. The system is not operating under the 2.05 General Permit.

K. A 1.11 General Permit allows the operation of a sewage collection system that serves upstream from the point where the daily design flow is 3000 gallons per day to the building drains, or a single gravity sewer line conveying sewage from a building drain directly to an interceptor, lateral, or manhole, regardless of daily design flow, if all of the following are met:
1. The system does not cause or contribute to an exceedance of a water quality standard established in 18 A.A.C. 11, Articles 1 and 4;
2. No sewage is released from the sewage collection system to the land surface;
3. No environmental nuisance condition listed in A.R.S. § 49-141 is created;
4. The system does not include a manhole, force main, or lift station serving more than one dwelling;
5. Applicable local administrative requirements for review and approval of design and construction are followed;
6. The performance standards specified in R18-9-E301(B) are met using:
a. Local building and construction codes,

b. Relevant design and construction standards specified in R18-9-E301, and
c. Appropriate operation and maintenance;
7. The system flows directly into one of the following downstream facilities:
a. An on-site wastewater treatment facility;
b. A sewage treatment facility operating under an individual permit; or
c. A sewage collection system operating under a 1.10, 2.05, or 4.01 General Permit; and
8. The system is not operating under a 2.05 General Permit.

L. A 1.12 General Permit allows the discharge of wastewater resulting from washing concrete from trucks, pumps, and ancillary equipment to an impoundment if the following conditions are met:
1. The person holds an AZPDES Construction General Permit authorizing the concrete washout activities;
2. The Stormwater Pollution Prevention Plan required by the Construction General Permit issued according to 18 A.A.C. 9, Article 9, Part C, for the construction activity addresses the concrete washout activities;
3. The vegetation at the soil base of the impoundment is cleared, grubbed, and compacted to uniform density not less than 95 percent. If the impoundment is located above grade, the berms or dikes are compacted to a uniform density not less than 95 percent;
4. If groundwater is less than 20 feet below land surface, the impoundment is lined with a synthetic liner at least 30 mils thick;
5. The impoundment is located at least 50 feet from any storm drain inlet, open drainage facility, or watercourse and 100 feet from any water supply well;
6. The impoundment is designed and operated to maintain adequate freeboard to prevent overflow or discharge of wastewater;
7. The concrete washout wastewater from any wash pad is routed to the impoundment;
8. The impoundment receives only concrete washout wastewater;
9. The annual average daily flow of wastewater to the impoundment is less than 3000 gallons per day; and
10. The following closure requirements are met.
a. The facility is closed by removing and appropriately disposing of any liquids remaining in the impoundment,
b. The area is graded to prevent ponding of water, and
c. Closure activities are completed before filing of the Notice of Termination under the AZPDES Construction General Permit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART C. TYPE 2 GENERAL PERMITS

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

A. A 2.01 General Permit allows for a drywell that drains an area where hazardous substances are used, stored, loaded, or treated.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation has concluded that:
a. Analytical results from sampling the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
b. The settling chamber does not contain sediments that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5-foot increments starting from 5 feet below ground surface and extending to 10 feet below the base of the drywell injection pipe; or
d. If coarse grained lithology prevents the collection of representative soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance;
3. Design information to demonstrate that the requirements in subsection (C) are satisfied; and
4. A copy of the Best Management Practices Plan described in subsection (D)(5).

C. Design requirements. An applicant shall:
1. Locate the drywell no closer than 100 feet from a water supply well and 20 feet from an underground storage tank;
2. Clearly mark the drywell “Stormwater Only” on the surface grate or manhole cover;
3. Locate the bottom of the drywell hole at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to at least 10 feet above the elevation of saturated conditions before constructing the drywell in the borehole;
4. Ensure that the drywell design or drainage area design includes a method to remove, intercept, or collect pollutants that may be present at the operation with the potential to reach the drywell. The applicant may include a flow control or pretreatment device, such as an interceptor, sump, or another device or structure designed to remove, intercept, or collect pollutants. The applicant may use flow control or pretreatment devices listed under R18-9-C304(D)(1) or (2) to satisfy the design requirements of this subsection;
5. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey; and
6. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns, the location of floor drains and French drains plumbed to the drywell, water supply wells, monitor wells, underground

storage tanks, and chemical and waste usage, storage, loading, and treatment areas.

D. Operational and maintenance requirements.
1. A permittee shall operate the drywell only for the disposal of stormwater. The permittee shall not release industrial process waters or wastes in the drywell or drywell retention basin drainage area.
2. The permittee shall implement a Best Management Practices Plan for operation of the drywell and control of pollutants in the drywell drainage area.
3. The permittee shall keep the Best Management Practices Plan on-site or at the closest practical place of work and provide the plan to the Department upon request.
4. The permittee may substitute any Spill Prevention Containment and Control Plan, facility response plan, or an AZPDES Stormwater Pollution Prevention Plan that meets the requirements of this subsection for a Best Management Practices Plan. If the permittee submits a substitute for the Best Management Practices Plan, the permittee shall identify the conditions within the substitute plan that satisfy the requirements of subsection (D).
5. The Best Management Practices Plan shall include:
   a. A site plan showing surface drainage patterns and the location of floor drains, water supply, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas. The site plan shall show surface grading details designed to prevent drainage and spills of hazardous substances from leaving the drainage area and entering the drywell;
   b. A design plan showing details of drywell design and drainage design, including flow control or pretreatment devices, such as interceptors, sumps, and other devices and structures designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell;
   c. Procedures to prevent and contain spills and minimize discharges to the drywell;
   d. Operational practices that include routine inspection and maintenance of the drywell and associated pretreatment and flow-control devices, periodic inspection of waste storage facilities, and proper handling of hazardous substances to prevent discharges to the drywell. Routine inspection and maintenance shall include:
      i. Replacing the adsorbent material in the skimmers, if installed, when the adsorbent capacity is reached;
      ii. Maintaining valves and associated piping for a drywell injection and treatment system;
      iii. Maintaining magnetic caps and mats, if installed;
      iv. Removing sludge from the oil/water separator, if installed, and replacing the filtration or adsorption material to maintain treatment capacity;
      v. Removing sediment from the catch basin inlet filters and retention basin to maintain required storage capacity; and
   e. Procedures for periodic employee training on practices required by the Best Management Practices Plan specific to the drywell and prevention of unauthorized discharges.
6. The permittee shall implement waste management practices to prohibit and prevent discharges, other than those exempted in A.R.S. § 49-250(B)(23), in the drywell drainage area, including:
   a. Maintaining an up-to-date inventory of generated wastes and waste products;
   b. Disposing or recycling all wastes or solvents through a company licensed to handle the material;
   c. Where possible, collecting and storing waste in waste receptacles located outside the drywell drainage area. If the permittee collects and stores the waste within the drywell drainage area, the permittee shall collect and store the waste in properly designed receptacles; and
   d. Using a licensed waste hauler to transport waste offsite to a permitted waste disposal facility.

E. Inspection. A permittee shall:
1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and the flow-control and treatment systems, and remove sediment annually or when 25 percent of the effective capacity is filled, whichever comes first, to restore capacity and ensure that the drywell functions properly. The permittee shall characterize the sediments that are removed from the drywell after inspection and dispose of the sediments according to local, state, and federal requirements; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that the treatment system is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

F. Recordkeeping. A permittee shall maintain for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:
1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, the location of water supply wells, monitor wells, underground storage tanks, and places where hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including any flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and methods proposed to prevent and contain hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, maintenance, and waste management practices;
5. Drywell sediment waste characteristics and disposal manifest records for sediments removed during routine inspections and maintenance activities; and

6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

G. Spills.

1. In the event of a spill, the permittee shall:
   a. Notify the Department within 24 hours of any spill of hazardous or toxic substance that enters the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of a hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the drywell injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample the soil in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
      i. Submit the results to the Department within 60 days of the date of the spill; and
      ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.
2. Based on the results of subsection (G)(1)(d), the Director may require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

H. Closure and decommissioning requirements.

1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
   a. The reason for the closure;
   b. The drywell registration number;
   c. The general permit reference number;
   d. The materials and methods used to close the drywell;
   e. The name of the contractor who performed the closure;
   f. The completion date;
   g. Any sampling data;
   h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
   i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under A.R.S. § 49-201(19) at a mining site.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge under R18-9-A301(B), an applicant shall submit the construction and operation specifications used to satisfy the requirements in subsection (C)(1).

C. Design and operational requirements.

1. An applicant shall design, construct, and operate the stockpile so that it does not impound water. An applicant may rely on stormwater run-on controls or facility design features, such as drains, or both.
2. An applicant shall direct storm runoff contacting the stockpile to a mine pit or a facility covered by an individual or general permit.
3. A permittee shall maintain any engineered feature of the facility in good working condition.
4. A permittee shall visually inspect the facility at least quarterly and repair any defect as soon as practical.
5. A permittee shall not add hazardous substances to the stockpiled material.

D. Closure requirements. In addition to the closure requirements in R18-9-A306, the following apply:

1. If an intermediate stockpile covered under a 2.02 General Permit is permanently closed, a permittee shall remove any remaining material, to the greatest extent practical, and regrade the area to prevent impoundment of water.
2. The permittee shall submit a narrative description of closure measures to the Department within 30 days after closure.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C303. 2.03 General Permit: Hydrologic Tracer Studies

A. A 2.03 General Permit allows for a discharge caused by the performance of tracer studies.

1. The 2.03 General Permit does not authorize the use of any hazardous substance, radioactive material, or any substance identified in A.R.S. § 49-243(I) in a tracer study.
2. A permittee shall complete a single tracer test within two years of the Notice of Intent to Discharge.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:

1. A narrative description of the tracer test including the type and amount of tracer used;
2. A Material Safety Data Sheet for the tracer; and
3. Unless the injection or distribution is within the capture zone of an established passive containment system meet-

ing the requirements of A.R.S. § 49-243(G), the following information:
a. A narrative description of the impacts that may occur if a solution migrates outside the test area, including a list of downgradient users, if any;
b. The anticipated effects and expected concentrations, if possible to calculate; and
c. A description of the monitoring, including types of tests and frequency.

C. Design and operational requirements. A permittee shall:
1. Ensure that injection into a well inside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed the total depth of the influence of the hydrologic sink;
2. Ensure that injection into a well outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) does not exceed rock fracture pressures during injection of the tracer;
3. Not add a substance to a well that is not compatible with the well's construction;
4. Ensure that a tracer is compatible with the construction materials at the impoundment if a tracer is placed or collected in an existing impoundment;
5. For at least two years, monitor quarterly a well that is hydraulically downgradient of the test site for the tracer if a tracer is used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G) and less than 85 percent of the tracer is recovered. The permittee may adjust this period with the consent of the Department if the permittee shows that the hydraulic gradient causes the tracer to reach the monitoring point in a shorter or longer period of time;
6. Ensure that a tracer does not leave the site in concentrations distinguishable from background water quality; and
7. Monitor the amount of tracer used and recovered and submit a report summarizing the test and results to the Department within 30 calendar days of test completion.

D. Recordkeeping. A permittee shall retain the following information at the site where the facility is located for at least three years after test completion and make it available to the Department upon request.
1. Test protocols,
2. Material Safety Data Sheet information,
3. Recovery records, and
4. A copy of the report submitted to the Department under subsection (C)(7).

E. Closure requirements.
1. If a tracer was used outside the capture zone of an established passive containment system that meets the requirements of A.R.S. § 49-243(G), a permittee shall account for any tracer not recovered through attenuation, modeling, or monitoring.
2. The permittee shall achieve closure immediately following the test, or if the test area is within a pollutant management area defined in an individual permit, at the conclusion of operations.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

A. A 2.04 General Permit allows for a drywell that drains an area at a facility for dispensing motor fuel, as defined in A.A.C. R20-2-701(19), including a commercial gasoline station with an underground storage tank.
1. A drywell at a motor fuel dispensing facility using hazardous substances is eligible for coverage under the 2.04 General Permit.
2. A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only motor fuel dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, including service bays, are not covered under the 2.04 General Permit.
3. Definition. For purposes of this Section, "hazardous substances" means substances that are components of commercially packaged automotive supplies, such as motor oil, antifreeze, and routine cleaning supplies such as those used for cleaning windshields, but not degreasers, engine cleaners, or similar products.

B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
1. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department;
2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or
d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.
3. Design information to demonstrate that the requirements in subsection (C) are satisfied.

C. Design requirements.
1. An applicant shall:
a. Include a flow control or pretreatment device identified in subsections (D)(1) or (2), or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;
b. Calculate the volume of runoff generated in the design storm event and anticipate the maximum

potential contaminant release quantity to design the treatment and holding capacity of the drywell;

c. Follow local codes and regulations to meet retention periods for removing standing water;

d. Locate the drywell at least 100 feet from a water supply well and 20 feet from an underground storage tank;

e. Locate the bottom of the drywell injection pipe at least 10 feet above groundwater. If during drilling and well installation the drywell borehole encounters saturated conditions, the applicant shall backfill the borehole with cement grout to a level at least 10 feet above the elevation at which saturated conditions were encountered in the borehole before constructing the drywell in the borehole;

f. Record the accurate latitude and longitude of the drywell using a Global Positioning System device or site survey and record the location on the site plans;

g. Clearly mark the drywell "Stormwater Only" on the surface grate or manhole cover;

h. Develop and maintain a current site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains and French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and chemical and waste usage, storage, loading, and treatment areas; and

i. Prepare design plans showing details of drywell design and drainage design, including one or a combination of pre-approved technologies described in subsections (D)(1) and (2) designed to remove, intercept, and collect any pollutant that may be present at the operation with the potential to reach the drywell.

2. For an existing drywell, an applicant that cannot meet the design requirements in subsections (C)(1)(d) and (e) shall provide the Department with the date of drywell construction, the depth of the drywell borehole and injection pipe, the distance from the drywell to the nearest water supply well and from the drywell to the underground storage tank, and the depth to the groundwater from the bottom of the drywell injection pipe.

D. Flow control and pretreatment. A permittee shall ensure that motor fuels and other hazardous substances are not discharged to the subsurface. A permittee may use any of the following flow control or pretreatment technologies:

1. Flow control. The permittee shall ensure that motor fuel and hazardous substance spills are removed before allowing stormwater to enter the drywell.

a. Normally closed manual or automatic valve. The permittee shall leave a normally closed valve in a closed position except when stormwater is allowed to enter the drywell;

b. Raised drywell inlet. The permittee shall:

i. Raise the drywell inlet at least six inches above the bottom of the retention basin or other storage structure, or install a six-inch asphalt or concrete raised barrier encircling the drywell inlet to provide a non-draining storage capacity within the retention basin or storage structure for complete containment of a spill; and

ii. Ensure that the storage capacity is at least 110 percent of the volume of the design storm event required by the local jurisdiction and the estimated volume of a potential motor fuel spill based on the facility's past incident reports or incident reports for other facilities that are similar in design;

c. Magnetic mat or cap. The permittee shall ensure that the drywell inlet is sealed with a mat or cap at all times, except after rainfall or a storm event when the mat or cap is temporarily removed to allow stormwater to enter the drywell; and that the mat or cap is always used with a retention basin or other type of storage;

d. Primary sump, interceptor, or settling chamber. The permittee may use a primary sump, interceptor, or settling chamber only in combination with another flow control or pre-treatment technology.

i. The permittee shall remove motor fuel or hazardous substances from the sump, interceptor, or chamber before allowing stormwater to enter the drywell.

ii. The permittee shall install a settling chamber or sump and allow the suspended solids to settle before stormwater flows into a drywell; install the drywell injection pipe in a separate chamber and connect the sump, interceptor, or chamber to the drywell inlet by piping and valving to allow the stormwater to enter the drywell.

iii. The permittee may install fuel hydrocarbon detection sensors in the sump, interceptor, or settling chamber that use flow control to prevent fuel from discharging into the drywell;

2. Pretreatment. The permittee shall prevent the bypass of motor fuels and hazardous substances from the pretreatment system to the drywell during periods of high flow.

a. Catch basin inlet filter. The permittee shall:

i. Install a catch basin inlet filter to fit inside a catchment drain to prevent motor fuels and hazardous substances from entering the drywell,

ii. Ensure that a motor fuel spill or a spill during a high rainfall does not bypass the system and directly release to the drywell injection pipe, and

iii. Combine the catch basin inlet filter with a flow control technology to prevent contaminated stormwater from entering the drywell injection pipe;

b. Combined settling chamber and an oil/water separator.

i. The permittee shall install a system that incorporates a catch basin inlet, a settling chamber, and an oil/water separator.

ii. The permittee may incorporate a self-sealing mechanism, such as fuel hydrocarbon detection sensors that activate a valve to cut off flow to the drywell inlet.

c. Combined settling chamber and oil/water separator, and filter/adsorption. The permittee shall:

i. Allow for adequate collection and treatment capacity for solid and liquid separation; and

ii. Allow a minimum treated outflow from the system to the drywell inlet of 20 gallons per minute. If a higher outflow rate is anticipated, the

applicant shall design a larger collection system with storage capacity.

d. Passive skimmer.

i. If a passive skimmer is used, the permittee shall install sufficient hydrocarbon adsorbent materials, such as pads and socks, or suspend the materials on top of the static water level in a sump or other catchment to absorb the entire volume of expected or potential spill.

ii. The permittee may use a passive skimmer only in combination with another flow control or pre-treatment technology.

E. Operation and maintenance. A permittee shall:

1. Operate the drywell only for the subsurface disposal of stormwater;
2. Remove or treat any motor fuel or hazardous substance spills;
3. Replace the adsorbent material in skimmers, if installed; when the adsorbent capacity is reached;
4. Maintain valves and associated piping;
5. Maintain magnetic caps and mats, if installed;
6. Remove sludge from the oil/water separator and replace the filtration or adsorption materials to maintain treatment capacity;
7. Remove sediment from the catch basin inlet filters and retention basins to maintain required storage capacity;
8. Remove accumulated sediment from the settling chamber annually or when 25 percent of the effective settling capacity is filled, whichever occurs first; and
9. Provide new employee training within one month of hire and annual employee training on how to maintain and operate flow control and pretreatment technology used in the drywell.

F. Inspection. A permittee shall:

1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers and in the flow control and treatment systems to ensure that the drywell is functioning properly; and
2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that it is functioning properly, make repairs, and perform maintenance as needed to restore proper function.

G. Recordkeeping. A permittee shall maintain, for at least 10 years, the following documents on-site or at the closest place of work and make the documents available to the Department upon request:

1. Documentation of drywell maintenance, inspections, employee training, and sampling activities;
2. A site plan showing the location of the drywell, the latitude and longitude coordinates of the drywell, surface drainage patterns and the location of floor drains or French drains that are plumbed to the drywell or are used to alter drainage patterns, water supply wells, monitor wells, underground storage tanks, and places where motor fuel and hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including one or a combination of the pre-approved flow control and pretreatment technologies;
4. An operations and maintenance manual that includes:
   a. Procedures to prevent and contain spills and minimize any discharge to the drywell and a list of actions and specific methods proposed for motor fuel and hazardous substance spills or leaks;
   b. Methods and procedures for inspection, operation, and maintenance activities;
   c. Procedures for spill response; and
   d. A description of the employee training program for drywell inspections, operations, and maintenance;
5. Drywell sediment waste characterization and disposal manifest records for sediments removed during routine inspections and maintenance activities; and
6. Sampling plans, certified laboratory reports, and chain of custody forms for soil, sediment, and groundwater sampling associated with drywell site investigations.

H. Spills.

1. In the event of a spill, a permittee shall:
   a. Notify the Department within 24 hours of any spill of motor fuel or hazardous or toxic substances that enters into the drywell inlet;
   b. Contain, clean up, and dispose of, according to local, state, and federal requirements, any spill or leak of motor fuel or hazardous substance in the drywell drainage area and basin drainage area;
   c. If a pretreatment system is present, verify that treatment capacity has not been exceeded; and
   d. If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments from 5 feet below ground surface to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface. The permittee shall:
      i. Submit the results to the Department within 60 days of the date of the spill; and
      ii. Notify the Department if soil contamination at the facility, not related to the spill, is being addressed by an existing approved remedial action plan.
2. The Director may, based on the results of subsection (H)(1)(d), require the permittee to submit an application for clean closure or an individual Aquifer Protection Permit.

I. Closure and decommissioning requirements.

1. A permittee shall:
   a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
   b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
   c. Remove the settling chamber;
   d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
   e. Mechanically compact the backfill.
2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:

a. The reason for the closure;
b. The drywell registration number;
c. The general permit reference number;
d. The materials and methods used to close the drywell;
e. The name of the contractor who performed the closure;
f. The completion date;
g. Any sampling data;
h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
i. Any other information necessary to verify that closure has been achieved.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 4096, effective September 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C305. 2.05 General Permit: Capacity, Management, Operation, and Maintenance of a Sewage Collection System

A. Definition. For purposes of this Section, "imminent and substantial threat to public health or the environment" means when:
1. The volume of a release is more than 2000 gallons; or
2. The volume of a release is more than 50 gallons but less than 2000 gallons and any one of the following apply:
   a. The release entered onto a recognized public area and members of the public were present during the release or before the release was mitigated;
   b. The release occurred on a public or private street and pedestrians were at risk of being splashed by vehicles during the release or before the release was mitigated;
   c. The release entered a perennial stream, an intermittent stream during a time of flow, a waterbody other than an ephemeral stream, a normally dry detention or sedimentation basin, or a drywell;
   d. The release occurred within an occupied building due to a condition in the permitted sewage collection system; or
   e. The release occurred within 100 feet of a school or a public or private drinking water supply well.

B. A 2.05 General Permit allows a permittee to manage, operate, and maintain a sewage collection system under the terms of a CMOM Plan that complies with subsection (D). The Department considers a sewage collection system operating in compliance with an AZPDES permit that incorporates provisions for capacity, management, operation, and maintenance of the system to comply with the provisions of the 2.05 General Permit regardless of whether a Notice of Intent to Discharge for the system was submitted to the Department.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and ownership of any downstream sewage collection system and sewage treatment facility that receives sewage from the applicant's sewage collection system;
2. A map of the service area for which general permit coverage is sought, showing streets and sewage service boundaries for the sewage collection system;
3. A statement indicating that the CMOM Plan is in effect and the principal officer or ranking elected official of the sewage collection system has approved the plan; and
4. A statement indicating whether a local ordinance requires an on-site wastewater treatment facility to hookup to the sewage collection system.

D. CMOM Plan.
1. A permittee shall continuously implement a CMOM Plan for the sewage collection system under the permittee's ownership, management, or operational control. The CMOM Plan shall include information to comply with subsection (E)(1) and instructions on:
   a. How to properly manage, operate, and maintain all parts of the sewage collection system that are owned or managed by the permittee or under the permittee's operational control, to meet the performance requirements in R18-9-E301(B);
   b. How to maintain sufficient capacity to convey the base flows and peak wet weather flow of a 10-year, 24-hour storm event for all parts of the collection system owned or managed by the permittee or under the permittee's operational control;
   c. All reasonable and prudent steps to minimize infiltration to the sewage collection system;
   d. All reasonable and prudent steps to stop all releases from the collection system owned or managed by the permittee or under the permittee's operational control; and
   e. The procedure for reporting releases described in subsection (F).
2. The permittee shall maintain and update the CMOM Plan for the duration of this general permit and make it available for Department and public review.
3. If the Department requests the CMOM Plan and upon review finds that the CMOM Plan is deficient, the Department shall:
   a. Notify the permittee in writing of the specific deficiency and the reason for the deficiency, and
   b. Establish a deadline of at least 60 days to allow the permittee to correct the deficiency and submit the amended provision to the Department for approval.

E. Sewage release response determination. If the sewage collection system releases sewage, the Director shall consider any of the following factors in determining compliance:
1. Sufficiency of the CMOM Plan.
   a. The level of detail provided by the CMOM Plan is appropriate for the size, complexity, and age of the system;
   b. The level of detail provided by the CMOM Plan is appropriate considering geographic, climatic, and hydrological factors that may influence the sewage collection system;
   c. The CMOM Plan provides schedules for the periodic preventative maintenance of the sewage collection system, including cleaning of all reaches of the sewage collection system below a specified pipe diameter.
      i. The CMOM Plan may allow inspection of sewer lines by Closed Circuit Television (CCTV) and postponement of cleaning to the next scheduled cleaning cycle if the CCTV inspection indicated that cleaning of a reach of the sewer is not needed.
      ii. The CMOM Plan may specify inspection and cleaning schedules that differ according to pipe diameter or other characteristics of the sewer;

d. The CMOM Plan identifies components of the sewage collection system that have insufficient capacity to convey, when properly maintained, the peak wet weather flow of a 10-year, 24-hour storm event. For those identified components, a capital improvement plan exists for achieving sufficient wet weather flow capacity within ten years of the effective date of permit coverage;
e. The CMOM Plan includes an overflow emergency response plan appropriate to the size, complexity, and age of the sewage collection system considering geographic, climatic, and hydrological factors that may influence the system;
f. The CMOM Plan establishes a procedure to investigate and enforce against any commercial or industrial entity whose flows to the sewage collection system have caused or contributed to a release;
g. The CMOM Plan adequately addresses management of flows from upstream sewage collection systems not under the ownership, management, or operational control of the permittee; or
h. Any other factor necessary to determine if the CMOM Plan is sufficient;

2. Compliance with the CMOM Plan.
a. The permittee's response to releases as established in the overflow emergency response plan, including whether:
i. Maintenance staff responds to and arrive at the release within the time period specified in the plan;
ii. Maintenance staff follow all written procedures to remove the cause of the release;
iii. Maintenance staff contain, recover, clean up, disinfect, and otherwise mitigate the release of sewage; and
iv. Required notifications to the Department, public health agencies, drinking water suppliers, and the public are provided;
b. The permittee's activities and timeliness in:
i. Implementing specified periodic preventative maintenance measures;
ii. Implementing the capital improvement plan; and
iii. Investigating and enforcing against an upstream sewage collection system, not under the ownership and operational control of the permittee, if those systems are impediments to the proper management of flows in the permittee's sewage collection system; or
c. Any other factor necessary to determine CMOM Plan compliance;

3. Compliance with the reporting requirements in subsection (F) and the public notice requirements in subsection (G); or
4. The release substantially endangers public health or the environment.

F. Reporting requirements.
1. Sewage releases.
a. A permittee shall report to the Department, by telephone, facsimile, or on the applicable notification form on the Department's Internet web site, any release that is an imminent and substantial threat to public health or the environment as soon as practical, but no later than 24 hours of becoming aware of the release.
b. A permittee shall submit a report to the Department within five business days after becoming aware of a release that is an imminent and substantial threat to public health or the environment. The report shall include:
i. The location of the release;
ii. The sewage collection system component from which the release occurred;
iii. The date and time the release began, was stopped, and when mitigation efforts were completed;
iv. The estimated number of persons exposed to the release, the estimated volume of sewage released, the reason the release is considered an imminent and substantial threat to public health or the environment if the volume is 2000 gallons or less, and where the release flowed;
v. The efforts made by the permittee to stop, contain, and clean up the released material;
vi. The amount and type of disinfectant applied to mitigate any associated public health or environmental risk; and
vii. The cause of the release or effort made to determine the cause and any effort made to help prevent a future reoccurrence.

2. Annual report. The permittee shall:
a. Submit an annual report to the Department postmarked no later than March 1. The report shall:
i. Tabulate all releases of more than 50 gallons from the permitted sewage collection system;
ii. Provide the date of any release that is an imminent and substantial threat to public health or the environment; and
iii. For other reportable releases under subsection (F)(2)(a)(i), provide the information in subsection (F)(1)(b);
b. Provide an amended map of the service area boundaries if, during the calendar year, any area was removed from the service area or if any area was added to the service area that the permittee wishes to include under the 2.05 General Permit and associated CMOM Plan.

G. Public notice. The permittee shall:
1. Post a notice, in a format approved by the Department, at any location where there were more than three reportable releases under subsection (F)(2)(a) from the sewage collection system during any 12-month period,
2. Include within the notice a warning that identified the releases or potential releases at the location and potential health hazards from any release,
3. Post the notice at a place where the public is likely to come in contact with the release, and
4. Maintain the postings until no releases from the location are reported for at least 12 months from the last release and the permittee followed all actions specified in the CMOM Plan to prevent releases at that location during the period.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-C306. 2.06 General Permit: Fish Hatchery Discharge to

a Perennial Surface Water

A. A 2.06 General Permit allows a fish hatchery to discharge to a perennial surface water if Aquifer Water Quality Standards are met at the point of discharge and the fish hatchery is operating under a valid AZPDES permit.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall provide:
1. The applicable AZPDES permit number;
2. A description of the facility; and
3. A laboratory report characterizing the wastewater discharge, including the analytical results for all numeric Aquifer Water Quality Standards under R18-11-406.

C. Design and operational requirements. An applicant shall:
1. Collect a representative sample of the discharge to demonstrate compliance with all numeric Aquifer Water Quality Standards and make the results available to the Department upon request, and
2. Maintain a record of the average and daily flow rates and make it available to the Department upon request.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART D. TYPE 3 GENERAL PERMITS

R18-9-D301. 3.01 General Permit: Lined Impoundments

A. A 3.01 General Permit allows a lined surface impoundment and a lined secondary containment structure. A permittee shall:
1. Ensure that inflow to the lined surface impoundment or lined secondary containment structure does not contain organic pollutants identified in A.R.S. § 49-243(I);
2. Ensure that inflow to the lined surface impoundment or lined secondary containment structure is from one or more of the following sources:
   a. Evaporative cooler overflow, condensate from a refrigeration unit, or swimming pool filter backwash;
   b. Wastewater that does not contain sewage, temporarily stored for short periods of time due to process upsets or rainfall events, provided the wastewater is promptly removed from the facility as required under subsection (D)(5). Facilities that continually contain wastewater as a normal function of facility operations are not covered under this general permit;
   c. Stormwater runoff that is not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act;
   d. Emergency fire event water;
   e. Wastewater from air pollution control devices at asphalt plants if the wastewater is routed through a sedimentation trap or sump and an oil/water separator before discharge;
   f. Non-contact cooling tower blowdown and non-contact cooling water, except discharges from electric generating stations with more than 100 megawatts generating capacity;
   g. Boiler blowdown;
   h. Wastewater derived from a potable water treatment system, including clarification sludge, filtration backwash, lime and lime-softening sludge, ion exchange backwash, and reverse osmosis spent waste;
   i. Wastewater from food washing;
   j. Heat exchanger return water;
   k. Wastewater from industrial laundries;
   l. Hydrostatic test water from a pipeline, tank, or appurtenance previously used for transmission of fluid;
   m. Wastewater treated through an oil/water separator before discharge; and
   n. Cooling water or wastewater from food processing.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A listing and description of all sources of inflow;
2. A representative chemical analysis of each expected source of inflow. If a sample is not available before facility construction, a permittee shall provide the chemical analysis of each inflow to the Department within 60 days of each inflow to the facility;
3. A narrative description of how the conditions of this general permit are satisfied. The narrative shall include a Quality Assurance/Quality Control program for liner installation, impoundment maintenance and repair, and impoundment operational procedures; and
4. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design and installation requirements. An applicant shall:
1. Design and construct surface water controls to:
   a. Ensure that the impoundment or secondary containment structure maintains, using design volume or mechanical systems, normal operating volumes, if any, and any inflow from the 100-year, 24-hour storm event. The facility shall maintain at least 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering the size of the impoundment and meteorologic and other site-specific factors; and
   b. Direct any surface water run-on from the 100-year 24-hour storm event around the facility if not intended for capture by facility;
2. Ensure that the facility design accommodates any significant geologic hazard, addressing static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
3. Ensure that site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound; and
4. Comply with the following impoundment lining requirements:
   a. If a synthetic liner is used, ensure that the liner is at least a 30-mil geomembrane liner or a 60-mil liner if High Density Polyethylene, or an alternative, that the liner's calculated seepage rate is less than 550 gallons per acre per day, and:
      i. Anchor the liner by securing it in an engineered anchor trench;
      ii. Ensure that the liner is ultraviolet resistant if it is regularly exposed to sunlight; and

iii. Ensure that the liner is constructed of a material that is chemically compatible with the wastewater or impounded solution and is not affected by corrosion or degradation;

b. If a soil liner is used:

i. Ensure that it resists swelling, shrinkage, and cracking and that the liner's calculated seepage rate is less than 550 gallons per acre per day;

ii. Ensure that the soil is at least 1-foot thick and compacted to a uniform density of 95 percent to meet the "Standard Test Method for Laboratory Compaction Characteristics of Soil Using Standard Effect (12,400 ft-lbf/ft^3), D698-00ae1," (2000) published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and

iii. Upon installation, protect the soil liner to prevent desiccation; and

c. For new facilities, develop and implement a construction Quality Assurance/Quality Control program that addresses site and subgrade preparation, inspection procedures, field testing, laboratory testing, and final inspection after construction of the liner to ensure functional integrity.

D. Operational requirements. A permittee shall:

1. Maintain sufficient freeboard to manage the 100-year, 24-hour storm event including at least 2 feet of freeboard under normal operating conditions. Management of the 100-year, 24-hour storm event may be through design, pumping, or a combination of both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for damage to the liner and for accumulation of residual material at least monthly. The operator shall conduct an inspection within 72 hours after the facility receives a significant volume of stormwater inflow;
4. Repair damage to the liner by following the Quality Assurance/Quality Control Plan required under subsection (B)(3); and
5. Remove all inflow from the impoundment as soon as practical, but no later than 60 days after a temporary event, for facilities designed to contain inflow only for temporary events, such as process upsets.

E. Recordkeeping. A permittee shall maintain at the site, the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The construction Quality Assurance/Quality Control program documentation; and
6. Records of any inflow into the impoundment other than those permitted by this Section.

F. Reporting requirements.

1. If the liner leaks, as evidenced by a drop in water level not attributable to evaporation, or if the berm breaches or an impoundment is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(4).

G. Closure requirements. The permittee shall notify the Department of the intent to close the facility permanently. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:

1. Remove liquids and any solid residue on the liner and dispose appropriately;
2. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
3. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall define the lateral and vertical extent of contamination and, within 60 days of the exceedance, notify the Department and submit an action plan for achieving clean closure for the Department's approval before implementing the plan;
4. If there is no evidence of holes, tears, or defective seams that could have leaked:
   a. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,
   b. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
   c. Grade the facility to prevent the impoundment of water; and
5. Notify the Department within 60 days following closure that the action plan was implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:

1. Liquid fraction. The discharge meets:
   a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);

b. The discharge meets one of the following criteria for microbiological contaminants:
   i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of *E. coli* bacteria is not more than 1/100 ml, or
   ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of *E. coli* bacteria is less than 126/100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and

2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in A.R.S. § 49-201(19).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. A characterization of the discharge, including a representative chemical and biological analysis of expected discharges and all source waters; and
2. The design capacity of any impoundment covered by this general permit.

C. Impoundment design and siting requirements. An applicant shall:
1. Ensure that the depth to the static groundwater table is greater than 20 feet;
2. Not locate the area of discharge immediately above karstic or fractured bedrock, unless the discharge meets the microbial limits specified in subsection (A)(1)(b)(i);
3. Maintain a minimum horizontal setback of 100 feet between the facility and any water supply well;
4. Design and construct an impoundment to maintain, using design volume or mechanical systems, normal operating volumes and any inflow from the 100-year, 24-hour storm event. The applicant shall:
   a. Divert any surface water run-on from the 100-year, 24-hour storm event around the facility if not intended for capture by facility design; and
   b. Design the facility to maintain 2 feet of freeboard or an alternative level of freeboard that the applicant demonstrates is reasonable, considering meteorological factors, the size of the impoundment, and other site-specific factors; or
   c. Discharge to surface water under the conditions of an AZPDES permit; and
5. Manage off-site disposal of sludge according to A.R.S. Title 49, Chapter 4.

D. Operational requirements.
1. Inorganic chemical, organic chemical, and pesticide monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A).
   b. If the concentration of any pollutant exceeds the numeric Aquifer Water Quality Standard, the permittee shall submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency for that pollutant to quarterly.
   c. If, in the quarterly sampling, the condition in subsection (D)(1)(b) continues for two consecutive quarters, the permittee shall submit an application for an individual permit.
2. Microbiological contaminant monitoring.
   a. The permittee shall monitor any discharge annually to determine compliance with the requirements of subsection (A)(1)(b).
   b. If the concentration of any pollutant exceeds the limits established in subsection (A)(1)(b), the permittee shall submit a report to the Department with a proposal for mitigation and increase monitoring frequency for that pollutant to monthly.
   c. If, in the monthly sampling, the condition in subsection (D)(2)(b) continues for three consecutive months, the permittee shall submit an application for an individual permit.

E. Recordkeeping. A permittee shall maintain at the site, the following information, if applicable for the disposal method, for at least 10 years, and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure;
3. Water quality data collected under subsection (D);
4. Standard operating procedures; and
5. Records of any discharge other than those identified under subsection (B).

F. Reporting requirements. The permittee shall:
1. Report unauthorized flows into the impoundment to the Department within five days of discovery, and
2. Submit the report required in subsections (D)(1)(b) or (2)(b) within 30 days of receiving the analytical results.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D303. 3.03 General Permit: Vehicle and Equipment Washes

A. A 3.03 General Permit allows a facility to discharge water from washing vehicle exteriors and vehicle equipment. The 3.03 General Permit does not authorize:
1. Discharge water that typically results from the washing of vehicle engines unless the discharge is to a lined surface impoundment;
2. Direct discharges of sanitary sewage, vehicle lubricating oils, antifreeze, gasoline, paints, varnishes, solvents, pesticides, or fertilizers;
3. Discharges resulting from washing the interior of vessels used to transport fuel products or chemicals, or washing equipment contaminated with fuel products or chemicals; or
4. Discharges resulting from washing the interior of vehicles used to transport mining concentrates that originate from the same mine site, unless the discharge is to a lined surface impoundment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a narrative description of the facility and a design of the disposal system and wash operations.

C. Design, installation, and testing requirements. An applicant shall:
1. Design and construct the wash pad:
   a. To drain and route wash water to a sump or similar sediment-settling structure and an oil/water separator or a comparable pretreatment technology;

b. Of concrete or material chemically compatible with the wash water and its constituents; and
c. To support the maximum weight of the vehicle or equipment being washed with an appropriate safety factor;
2. Not use unlined ditches or natural channels to convey wash water;
3. Ensure that a surface impoundment meets the requirements in R18-9-D301(C)(1) through (3). The applicant shall ensure that berms or dikes at the impoundment can withstand wave action erosion and are compacted to a uniform density not less than 95 percent;
4. Ensure that a surface impoundment required for wash water described in subsection (A)(1) meets the design and installation requirements in R18-9-D301(C);
5. If wash water is received by an unlined surface impoundment or engineered subsurface disposal system, the applicant shall:
a. Ensure that the annual daily average flow is less than 3000 gallons per day;
b. Maintain a minimum horizontal setback of 100 feet between the impoundment or subsurface disposal system and any water supply well;
c. Ensure that the bottom of the surface impoundment or subsurface disposal system is at least 50 feet above the static groundwater level and the intervening material does not consist of karstic or fractured bedrock;
d. Ensure that the wash water receives primary treatment before discharge through, at a minimum, a sump or similar structure for settling sediments or solids and an oil/water separator or a comparable pretreatment technology designed to reduce oil and grease in the wastewater to 15 mg/l or less;
e. Withdraw the separated oil from the oil/water separator using equipment such as adjustable skimmers, automatic pump-out systems, or level sensing systems to signal manual pump-out; and
f. If a subsurface disposal system is used, design the system to prevent surfacing of the wash water.

D. Operational requirements. The permittee shall:
1. Inspect the oil/water separator before operation to ensure that there are no leaks and that the oil/water separator is in operable condition;
2. Inspect the entire facility at least quarterly. The inspection shall, at a minimum, consist of a visual examination of the wash pad, the sump or similar structure, the oil/water separator, and all surface impoundments;
3. Visually inspect each surface impoundment at least monthly, to ensure the volume of wash water is maintained within the design capacity and freeboard limitation;
4. Repair damage to the integrity of the wash pad or impoundment liner as soon as practical;
5. Maintain the oil/water separator to achieve the operational performance of the separator;
6. Remove accumulated sediments in all surface impoundments to maintain design capacity; and
7. Use best management practices to minimize the introduction of chemicals not typically associated with the wash operations. Only biodegradable surfactant or soaps are allowed. The permittee shall not use products that contain chemicals in concentrations likely to cause a violation of an Aquifer Water Quality Standard at the applicable point of compliance.

E. Monitoring requirements.
1. If wash water is discharged to an unlined surface impoundment or other area for subsurface disposal, the permittee shall monitor the wash water quarterly at the point of discharge for pH and for the presence of C_{10} through C_{32} hydrocarbons using a Department of Health Services certified method.
2. If pH is not between 6.0 and 9.0 or the concentration of C_{10} through C_{32} hydrocarbons exceeds 50 mg/l, the permittee shall, within 30 days of the monitorings, submit a report to the Department with a proposal for mitigation and shall increase monitoring frequency to monthly.
3. If the condition in subsection (E)(2) persists for three consecutive months, the permittee shall submit, within 90 days, an application for an individual permit.

F. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure; and
3. The Material Safety Data Sheets for the chemicals used in the wash operations and any required monitoring results.

G. Closure requirements. A permittee shall comply with the closure requirements specified in R18-9-D301(G) if a liner has been used. If no liner is used the permittee shall remove and appropriately dispose of any liquids and grade the facility to prevent impoundment of water.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D304. 3.04 General Permit: Non-Stormwater Impoundments at Mining Sites

A. A 3.04 General Permit allows discharges to lined surface impoundments, lined secondary containment structures, and associated lined conveyance systems at mining sites.
1. The following discharges are allowed under the 3.04 General Permit:
a. Seepage from tailing impoundments, unleached rock piles, or process areas;
b. Process solution temporarily stored for short periods of time due to process upsets or rainfall, provided the solution is promptly removed from the facility as required under subsection (D);
c. Stormwater runoff not permitted under A.R.S. § 49-245.01 because the facility does not receive solely stormwater or because the runoff is regulated but not considered stormwater under the Clean Water Act; and
d. Wash water specific to sand and gravel operations not covered by R18-9-B301(A).
2. Facilities that continually contain process solution as a normal function of facility operations are not eligible for coverage under the 3.04 General Permit. If a normal process solution contains a pollutant regulated under A.R.S. § 49-243(I) the 3.04 General Permit does not apply if the pollutant will compromise the integrity of the liner.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:

1. A description of the sources of inflow to the facility. An applicant shall include a representative chemical analysis of expected sources of inflow to the facility unless a sample is not available, before facility construction, in which case the applicant shall provide a chemical analysis of solution present in the facility to the Department within 90 days after the solution first enters the facility;
2. Documentation demonstrating that the facility design and operation under subsections (C) and (D) have been reviewed by a mining engineer or an Arizona-registered professional engineer before submission to the Department; and
3. A contingency plan that specifies actions proposed in case of an accidental release from the facility, overtopping of the impoundment, breach of the berm, or unauthorized inflows into the impoundment or containment structure.

C. Design, construction, and installation requirements. An applicant shall:

1. Design and construct the impoundment or secondary containment structure as specified under R18-9-D301(C)(1);
2. Ensure that conveyance systems are capable of handling the peak flow from the 100-year storm;
3. Construct the liner as specified in R18-9-D301(C)(4)(a);
4. Develop and implement a Quality Assurance/Quality Control program that meets or exceeds the liner manufacturer's guidelines. The program shall address site and subgrade preparation, inspection procedures, field testing, laboratory testing, repair of seams during installation, and final inspection of the completed liner for functional integrity;
5. If the facility is located in the 100-year flood plain, design the facility so it is protected from damage or flooding as a result of a 100-year, 24-hour storm event;
6. Design and manage the facility so groundwater does not come into contact with the liner;
7. Ensure that the facility design addresses any significant geologic hazard relating to static and seismic stability. The applicant shall document any design adjustments made for this reason in the Notice of Intent to Discharge;
8. Ensure that the site preparation includes, as appropriate, clearing the area of vegetation, grubbing, grading, and embankment and subgrade preparation. The applicant shall ensure that supporting surface slopes and foundation are stable and structurally sound;
9. Ensure that the liner is anchored by being secured in an engineered anchor trench. If regularly exposed to sunlight, the applicant shall ensure that the liner is ultraviolet resistant; and
10. Use compacted clay subgrade in areas with shallow groundwater conditions.

D. Operational requirements. The permittee shall:

1. Maintain the freeboard required in subsection (C)(1) through design, pumping, or both;
2. Remove accumulated residues, sediments, debris, and vegetation to maintain the integrity of the liner and the design capacity of the impoundment;
3. Perform and document a visual inspection for cracks, tears, perforations and residual build-up at least monthly. The operator shall conduct and document an inspection after the facility receives significant volumes of stormwater inflow;
4. Report cracks, tears, and perforations in the liner to the Department, and repair them as soon as practical, but no later than 60 days under normal operating conditions, after discovery of the crack, tear, or perforation;
5. For facilities that temporarily contain a process solution due to process upsets, remove the process solution from the facility as soon as practical, but no later than 60 days after cessation of the upset; and
6. For facilities that temporarily contain a process solution due to rainfall, remove the process solution from the facility as soon as practical.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available;
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results and facility closure;
3. Capacity design criteria;
4. A list of standard operating procedures;
5. The Quality Assurance/Quality Control program required under subsection (C)(4); and
6. Records of any unauthorized flows into the impoundment.

F. Reporting requirements.

1. If the liner is breached, as evidenced by a drop in water level not attributable to evaporation, or if the impoundment breaches or is overtopped due to a catastrophic or other significant event, the permittee shall report the circumstance to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3). The permittee shall submit a final report to the Department within 60 days of the event summarizing the circumstances of the problem and corrective actions taken.
2. The permittee shall report unauthorized flows into the impoundment to the Department within five days of discovery and implement the contingency plan required in subsection (B)(3).

G. Closure requirements.

1. The permittee shall notify the Department of the intent to close the facility permanently.
2. Within 90 days following closure notification the permittee shall comply with the following requirements, as applicable:
   a. Remove liquids and any solid residue on the liner and dispose appropriately;
   b. Inspect the liner for evidence of holes, tears, or defective seams that could have leaked;
   c. If evidence of leakage is discovered, remove the liner in the area of suspected leakage and sample potentially impacted soil. If soil remediation levels are exceeded, the permittee shall, within 60 days notify the Department and submit an action plan for the Department's approval before implementing the plan;
   d. If there is no evidence of holes, tears, or defective seams that could have leaked:
      i. Cover the liner in place or remove it for disposal or reuse if the impoundment is an excavated impoundment,

ii. Remove and dispose of the liner elsewhere if the impoundment is bermed, and
iii. Grade the facility to prevent the impoundment of water; and

3. Notify the Department within 60 days following closure that the action plan has been implemented and the closure is complete.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D305. 3.05 General Permit: Disposal Wetlands

A. A 3.05 General Permit allows discharges of reclaimed water into constructed or natural wetlands, including waters of the United States, waters of the state, and riparian areas, for disposal. This general permit does not apply if the purpose of the wetlands is to provide treatment.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the name and individual permit number of the facility providing the reclaimed water.

C. Design requirements. An applicant shall:

1. Ensure that the reclaimed water released into the wetland meets numeric and narrative Aquifer Water Quality Standards for all parameters except for coliform bacteria and is Class A+ reclaimed water. A+ reclaimed water is wastewater that has undergone secondary treatment established under R18-9-B204(B)(1), filtration, and meets a total nitrogen concentration under R18-9-B204(B)(3) and fecal coliform limits under R18-9-B204(B)(4);
2. Maintain a minimum horizontal separation of 100 feet between any water supply well and the maximum wetted area of the wetland;
3. Post signs at points of access and every 250 feet along the perimeter of the wetland stating, "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER. DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol; and
4. Ensure that wetland siting is consistent with local zoning and land use requirements.

D. Operational requirements.

1. A permittee shall manage the wetland to minimize vector problems.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. Management of flows into and through the wetland to minimize erosion and damage to vegetation;
   c. Management of visitation and use of the wetlands by the public;
   d. A management plan for vector control;
   e. A plan or criteria for enhancing or supplementing of wetland vegetation; and
   f. Management of shallow groundwater conditions on existing on-site wastewater treatment facilities.
3. The permittee shall perform quarterly inspections to review bank integrity, erosion evidence, the condition of signage and vegetation, and correct any problem noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the wetland, including the volume of inflow to the wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D306. 3.06 General Permit: Constructed Wetlands to Treat Acid Rock Drainage at Mining Sites

A. A 3.06 General Permit allows the operation of constructed wetlands that receive, with the intent to treat, acid rock drainage from a closed facility.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit a design, including information on the quality of the influent, the treatment process to be used, the expected quality of the wastewater, and the nutrients and other constituents that will indicate wetland performance.

C. Design, construction, and installation. An applicant shall:

1. Ensure that:
   a. Water released into the treatment wetland is compatible with construction materials and vegetation;
   b. Water released from the treatment wetland:
      i. Meets numeric Aquifer Water Quality Standards,
      ii. Has a pH between 6.0 and 9.0, and
      iii. Has a sulfate concentration less than 1000 mg/l; and
   c. Water released from the treatment wetland complies with and is released under an individual permit and an AZPDES Permit, if required;
2. Construct the treatment wetland with a liner, using a low-hydraulic conductivity synthetic liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that, if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
3. Design the treatment wetland for optimum:
   a. Sizing appropriate for the anticipated treatment,
   b. Cell configuration,
   c. Vegetative species composition, and
   d. Berm configuration;
4. Construct and locate the treatment wetland so that it:

a. Maintains physical integrity during a 100-year, 24-hour storm event; and
b. Operates properly during a 25-year, 24-hour storm event;

5. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table; and
6. If public access to the treatment wetland is anticipated or encouraged, post signs at points of access and every 250 feet along the perimeter of the treatment wetland stating, "CAUTION. THESE WETLANDS CONTAIN MINE DRAINAGE WATER. DO NOT DRINK." The permittee shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol.

D. Operational requirements.
1. The permittee shall monitor the water leaving the treatment wetlands at least quarterly for the standards specified in subsection (C)(1)(b). Monitoring shall include nutrients or other constituents used as indicators of treatment wetland performance.
2. The permittee shall submit to the Department and implement a Best Management Practices Plan for operation of the treatment wetland. The Best Management Practices Plan shall include:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address problems, including treatment performance, wash-out and vegetation die-off, and a plan to apply for an individual permit if the treatment wetland is unable to achieve the treatment standards in subsection (C)(1)(b) on a continued basis;
   c. Management of flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.
3. The permittee shall perform quarterly inspections to review the bank and liner integrity, erosion evidence, and the condition of signage and vegetation, and correct any problems noted.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements.
1. If preliminary laboratory results indicate that the quality of the water leaving the treatment wetlands does not meet the standards specified in subsection (C)(1)(b), the permittee may request that the laboratory re-analyze the sample before reporting the results to the Department. The permittee shall:
   a. Conduct verification sampling within 15 days of receiving final laboratory results,
   b. Conduct verification sampling only for parameters that are present in concentrations greater than the standards specified in subsection (C)(1)(b), and
   c. Notify the Department in writing within five days of receiving final laboratory results.
2. If the final laboratory result confirms that the quality of the water leaving the treatment wetlands does not meet the standards in subsection (C)(1)(b), the permittee shall implement the contingency plan required by subsection (D)(2)(b) and notify the Department that the plan is being implemented.
3. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland, including the volume of inflow to the treatment wetland in the past year.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-D307. 3.07 General Permit: Tertiary Treatment Wetlands

A. A 3.07 General Permit allows constructed wetlands that receive with the intent to treat, discharges of reclaimed water that meet the secondary treatment level requirements specified in R18-9-B204(B)(1).

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit:
1. The name and individual permit number of any facility that provides the reclaimed water to the treatment wetland;
2. The name and individual permit number of any facility that receives water released from the treatment wetland;
3. The design of the treatment wetland construction and management project, including information on the quality of the influent, the treatment process, and the expected quality of the wastewater;
4. A Best Management Practices Plan that includes:
   a. A site plan showing the treatment wetland footprint, point of inflow, stormwater drainage, and placement of vegetation;
   b. A contingency plan to address any problem, including treatment performance, wash-out, and vegetation die-off;
   c. A management plan for flows into and through the treatment wetland to minimize erosion and damage to vegetation;
   d. A description of the measures for restricting access to the treatment wetlands by the public;
   e. A management plan for vector control; and
   f. A plan or criteria for enhancing or supplementing treatment wetland vegetation.

C. Design requirements. An applicant shall:
1. Release water from the treatment wetland under an individual permit and an AZPDES permit, if required. The applicant shall release water from the treatment wetland only to a direct reuse site if the site is permitted to receive reclaimed water of the quality generated under the individual permit specified in subsection (B)(1);
2. Construct and locate the treatment wetland so that it:

a. Maintains physical integrity during a 100-year, 24-hour storm event; and
b. Operates properly during a 25-year, 24-hour storm event;

3. Ensure that the bottom of the treatment wetland is at least 20 feet above the seasonal high groundwater table;
4. Maintain a minimum horizontal separation of 100 feet between a water supply well and the maximum wetted area of the treatment wetland;
5. Maintain the setbacks specified in R18-9-B201(I) for no noise, odor, or aesthetic controls between the property boundary at the site and the maximum wetted area of the treatment wetland;
6. Fence the treatment wetland area to prevent unauthorized access;
7. Post signs at points of access stating "CAUTION. THESE WETLANDS CONTAIN RECLAIMED WATER, DO NOT DRINK." The applicant shall ensure that the signs are in English and Spanish, or in English with inclusion of the international "do not drink" symbol;
8. Construct the treatment wetland with a liner using low hydraulic conductivity liner, site-specific liner, or both, to achieve a calculated seepage rate of less than 550 gallons per acre per day. The applicant shall:
   a. Ensure that if a synthetic liner is used, such as geomembrane, the liner is underlain by at least 6 inches of prepared and compacted subgrade;
   b. Anchor the liner along the perimeter of the treatment wetland; and
   c. Manage the plants in the treatment wetland to prevent species with root penetration that impairs liner performance;
9. Calculate the size and depth of the treatment wetland so that the rate of flow allows adequate treatment detention time. The applicant shall design the treatment wetland with at least two parallel treatment cells to allow for efficient system operation and maintenance;
10. Ensure that the treatment wetland vegetation includes cattails, bulrush, common reed, or other species of plants with high pollutant treatment potential to achieve the intended water quality identified in subsection (B)(3); and
11. Ensure that construction and operation of the treatment wetlands is consistent with local zoning and land use requirements.

D. Operational requirements. The permittee shall:
1. Implement the Best Management Practices Plan approved under subsection (B);
2. Monitor wastewater leaving the treatment wetland to ensure that discharge water quality meets the expected wastewater quality specified in subsection (B)(3). The permittee shall ensure that analyses of wastewater samples are conducted by a laboratory certified by the Department of Health Services, following the Department's Quality Assurance/Quality Control requirements;
3. Follow the prescribed measures as required in the contingency plan under subsection (B)(4)(b) and submit a written report to the Department within five days if verification sampling demonstrates that an alert level or discharge limit is exceeded;
4. Inspect the treatment wetlands at least quarterly for bank and liner integrity, erosion evidence, and condition of signage and vegetation, and correct any problem discovered; and
5. Ensure that the treatment wetland is operated by a certified operator under 18 A.A.C. 5, Article 1.

E. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
1. Construction drawings and as-built plans, if available; and
2. A log book or similar documentation to record inspection results, repair and maintenance activities, monitoring results, and facility closure.

F. Reporting requirements. The permittee shall, by January 30, provide the Department in writing with an annual assessment of the biological condition of the treatment wetland including the volume of inflow to the treatment wetland in the past year.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

PART E. TYPE 4 GENERAL PERMITS

R18-9-E301. 4.01 General Permit: Sewage Collection Systems

A. A 4.01 General Permit allows for construction and operation of a new sewage collection system or expansion of an existing sewage collection system involving new construction as follows:
1. A sewage collection system or portion of a sewage collection system that serves downstream from the point where the daily design flow is 3000 gallons per day based on Table 1, Unit Design Flows, except a gravity sewer line conveying sewage from a single building drain directly to an interceptor, collector sewer, lateral, or manhole regardless of daily design flow;
2. A sewage collection system that includes a manhole; or
3. A sewage collection system that includes a force main or lift station serving more than one dwelling.

B. Performance. An applicant shall design, construct, and operate a sewage collection system so that the sewage collection system:
1. Provides adequate wastewater flow capacity for the planned service area;
2. Minimizes sedimentation, blockage, and erosion through maintenance of proper flow velocities throughout the system;
3. Prevents releases of sewage to the land surface through appropriate sizing, capacities, and inflow and infiltration prevention measures throughout the system;
4. Protects water quality through minimization of exfiltration losses from the system;
5. Provides for adequate inspection, maintenance, testing, visibility, and accessibility;
6. Maintains system structural integrity; and
7. Minimizes septic conditions in the sewage collection system.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B), an applicant shall submit the following information:
1. A statement on a form approved by the Director, signed by the owner or operator of the sewage treatment facility that treats or processes the sewage from the proposed sewage collection system.
   a. The statement shall affirm that the additional volume of wastewater delivered to the facility by the proposed sewage collection system will not cause

any flow or effluent quality limits of the individual permit for the facility to be exceeded.

b. If the facility is classified as a groundwater protection permit facility under A.R.S. § 49-241.01(C), or if no flow or effluent limits are applicable, the statement shall affirm that the design flow of the facility will not be exceeded;

2. If the proposed sewage collection system delivers wastewater to a downstream sewage collection system under different ownership or control, a statement on a form approved by the Director, signed by the owner or operator of the downstream sewage collection system, affirming that the downstream system can maintain the performance required by subsection (B) when receiving the increased flows;
3. A general site plan showing the boundaries and key aspects of the project;
4. Construction quality drawings that provide overall details of the site and the engineered works comprising the project including:
   a. The plans and profiles for all sewer lines, manholes, force mains, depressed sewers, and lift stations with sufficient detail to allow Department verification of design and performance characteristics;
   b. Relevant cross sections showing construction details and elevations of key components of the sewage collection system to allow Department verification of design and performance characteristics, including the slope of each gravity sewer segment stated as a percentage; and
   c. Drainage features and controls, and erosion protection as applicable, for the components of the project; and
   d. Horizontal and vertical location of utilities within the area affected by the sewer line construction;
5. Documentation of design flows for significant components of the sewage collection system and the basis for calculating the design flows;
6. Drawings, reports, and other information that are clear, reproducible, and in a size and format specified by the Department. The applicant may submit the drawings in a Department-approved electronic format; and
7. Design documents, including plans, specifications, drawings, reports, and calculations that are signed, dated, and sealed by an Arizona-registered professional engineer. The designer shall use good engineering judgment by following engineering standards of practice, and rely on appropriate engineering methods, calculations, and guidance.

D. Design requirements.

1. General Provisions. An applicant shall design and construct a new sewage collection system or an expansion of an existing sewage collection system involving new construction, according to the requirements of this general permit. An applicant shall:
   a. Base design flows for components of the system on unit flows specified in Table 1, Unit Design Flows.
   b. Design gravity sewer lines and all other sewage collection system components, including, manholes, force mains, lift stations, depressed sewers, and appurtenant devices and structures to accommodate maximum sewage flows as follows:
      i. Any point in a sewer main when flowing full can accommodate a peak wet weather flow calculated by multiplying the sum of the upstream sources of flow from Table 1, Unit Design Flows by a dry weather peaking factor based on upstream population, as tabulated below, and adding a wet weather infiltration and inflow rate based on either a percentage of peak dry weather flow or a gallons per acre rate of flow;

Upstream Population	**Dry Weather Peaking Factor**
100	3.62
200	3.14
300	2.90
400	2.74
500	2.64
600	2.56
700	2.50
800	2.46
900	2.42
1000	2.38
1001 to 10,000	$PF = (6.330 \times p^{-0.231}) + 1.094$
10,001 to 100,000	$PF = (6.177 \times p^{-0.233}) + 1.128$
More than 100,000	$PF = (4.500 \times p^{-0.174}) + 0.945$
PF = Dry Weather Peaking Factor p = Upstream Population	

      ii. For a lift station serving less than 600 single family dwelling units (d.u.), use either of the following methods to size the pumps for peak dry weather flow in gallons per minute and add an allowance for wet weather flow and infiltration:
         (1) Peak dry weather flow = 17 $d.u.^{0.42}$, or
         (2) Peak dry weather flow = 11.2 $(population)^{0.42}$
      iii. If justified by the applicant, the Department may accept lower unit flow values in the served area due to significant use of low-flow fixtures, hydrographs of actual flows, or other factors;
   c. Use the "Uniform Standard Specifications for Public Works Construction" (revisions through 2004) and the "Uniform Standard Details for Public Works Construction" (revisions through 2004) published by the Maricopa Association of Governments, and the "Standard Specifications for Public Improvements," (2003 Edition), and "Standard Details for Public Improvements," (2003 Edition), published jointly by Pima County Wastewater Management and the City of Tucson, as the applicable design and construction criteria, unless the Department approves alternative design standards or specifications. An applicant in a county other than Maricopa and Pima shall use design and construction criteria from either the Maricopa Association of Governments or the Pima County Wastewater Management and the City of Tucson for the facility unless alternative criteria are designated by the Department.
      i. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material.
      ii. Copies of the incorporated material are available for inspection at the Arizona Department

of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the Maricopa Association of Governments, 302 N. 1st Avenue, Suite 300, Phoenix, Arizona 85003, or on the web at http://www.mag.maricopa.gov/archive/Newpages/on-line.htm; or from Pima County Wastewater Management, 201 N. Stone Avenue, Tucson, Arizona 85701-1207, or on the web at http://www.pima.gov/wwm/stddet;

d. Ensure that sewage collection system components are separated from drinking water distribution system components as specified in 18 A.A.C. 5, Article 5;
e. Ensure that sewage collection system components are separated from reclaimed water system components as specified in 18 A.A.C. 9, Article 6; and
f. Request review and approval of an alternative to a design feature specified in this Section by following the requirements in R18-9-A312(G).

2. Gravity sewer lines. An applicant shall:
   a. Ensure that any sewer line that runs between manholes, if not straight, is of constant horizontal curvature with a radius of curvature not less than 200 feet;
   b. Cover each sewer line with at least 3 feet of earth cover meeting the requirements of subsection (D)(2)(h). The applicant shall:
      i. Include at least one note specifying this requirement in construction plans;
      ii. If site-specific limitations prevent 3 feet of earth cover, provide the maximum cover attainable, construct the sewer line of ductile iron pipe or other design of equivalent or greater tensile and compressive strength, and note the change on the construction plans; and
      iii. Ensure that the design of the pipe and joints can withstand crushing or shearing from any expected static and live load to protect the structural integrity of the pipe. Construction plans shall note locations requiring these measures;
   c. If sewer lines cross or are constructed in floodways;
      i. Place the lines at least 2 feet below the level of the 100-year storm scour depth and calculated 100-year bed degradation and construct the lines using ductile iron pipe or pipe with equivalent tensile strength, compressive strength, shear resistance, and scour protection.
      ii. If it is not possible to maintain the 2 feet of clearance specified in subsection (D)(2)(c)(i), using the process described in R18-9-A312(G), provide a design that ensures that the sewer line will withstand any lateral and vertical load for the scour and bed degradation conditions specified in subsection (D)(2)(c)(i);
      iii. Ensure that sewer lines constructed in a floodway extend at least 10 feet beyond the boundary of the 100-year storm scouring;
      iv. If a sewer line is constructed in a floodway and is longer than the applicable maximum manhole spacing distance in subsection (D)(3)(a), using the process described in R18-9-A312(G), provide a design that ensures the performance standards in subsection (B) are met; and
      v. Note locations requiring these measures on the construction plans;
   d. Ensure that each sewer line is 8 inches in diameter or larger except the first 400 feet of a dead end sewer line with no potential for extension may be 6 inches in diameter if the design flow criteria specified in subsections (D)(1)(a) and (D)(1)(b) are met and the sewer line is installed with a slope sufficient to achieve a velocity of at least 3 feet per second when flowing full. If the line is extended, the applicant seeking the extension shall replace the entire length with larger pipe to accommodate the new design flow unless the applicant demonstrates with engineering calculations that using the existing 6-inch pipe will accommodate the design flow;
   e. Design sewer lines with at least the minimum slope calculated from Manning's Formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second when flowing full.
      i. An applicant may request a smaller minimum slope under R18-9-A312(G) if the smaller slope is justified by a quarterly program of inspections, flushings, and cleanings.
      ii. If a smaller minimum slope is requested, the applicant shall not specify a slope that is less than 50 percent of that calculated from Manning's formula using a coefficient of roughness of 0.013 and a sewage velocity of 2 feet per second.
      iii. The ratio of flow depth in the pipe to the diameter of the pipe shall not exceed 0.75 in peak dry weather flow conditions;
   f. Design sewer lines to avoid a slope that creates a sewage velocity greater than 10 feet per second. The applicant shall construct any sewer line carrying a flow with a normal velocity of greater than 10 feet per second using ductile iron pipe or pipe with equivalent erosion resistance, and structurally reinforce the receiving manhole or sewer main;
   g. Design and install sewer lines, connections, and fittings with materials that meet or exceed manufacturer's specifications consistent with this Chapter to:
      i. Limit inflows, infiltration, and exfiltration;
      ii. Resist corrosion in the ambient electrochemical environment;
      iii. Withstand anticipated static and live loads; and
      iv. Provide internal erosion protection;
   h. Indicate trenching and bedding details applicable for each pipe material and size in the design plans. Unless the Department approved alternative design standards or specifications under subsection (D)(1)(c), the applicant shall place and bed the sewer lines in trenches following the specifications in "Trench Excavation, Backfilling, and Compaction" (Section 601) revised 2004, published by the Maricopa Association of Governments; and "Rigid Pipe Bedding for Sanitary Sewers" (WWM 104) revised July 2002, and "Flexible Pipe Bedding for Sanitary Sewers" (WWM 105) revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).
   i. Perform a deflection test of the total length of all sewer lines made of flexible materials to ensure that

the installation meets or exceeds the manufacturer's recommendations and record the results;

j. Test each segment of the sewer line for leakage using the applicable method below and record the results:
   i. "Standard Test Method for Installation of Acceptance of Plastic Gravity Sewer Lines Using Low-Pressure Air, F1417-92(1998)," published by the American Society for Testing and Materials;
   ii. "Standard Practice for Testing Concrete Pipe Sewer Lines by Low-Pressure Air Test Method, C924-02 (2002)," published by the American Society for Testing and Materials;
   iii. "Standard Test Method for Low-Pressure Air Test of Vitrified Clay Pipe Lines, C828-03 (2003)," published by the American Society for Testing and Materials;
   iv. "Standard Test Method for Hydrostatic Infiltration Testing of Vitrified Clay Pipe Lines, C1091-03a (2003)," published by the American Society for Testing Materials;
   v. "Standard Practice for Infiltration ion and Exfiltration Acceptance Testing of Installed Precast Concrete Pipe Sewer Lines, C969-02 (2002)," published by the American Society for Testing Material; or
   vi. "Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications, D2321-00 (2000)," published by the American Society for Testing Materials; or
   vii. The material listed in subsections (D)(2)(j)(i) through (vi) is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;

k. Test the total length of the sewer line for uniform slope by lamp lighting, remote camera or similar method approved by the Department, and record the results; and

l. Minimize the planting within the disturbed area of new sewage collection system construction of plant species having roots that are likely to reach and damage the sewer or impair the operation of the sewer or visual and vehicular access to any manhole.

3. Manholes.

a. An applicant shall install manholes at all grade changes, size changes, alignment changes, sewer intersections, and at any location necessary to comply with the following spacing requirements:

Sewer Pipe Diameter (inches)	Maximum Manhole Spacing (feet)
Less than 8	400
8 to less than 18	500
18 to less than 36	600
36 to less than 60	800
60 or greater	1300

b. The Department shall allow greater manhole spacing if the applicant follows the procedure provided in R18-9-A312(G) and provides documentation showing the operator possesses or has available specialized sewer cleaning equipment suitable for the increased spacing.

c. The applicant shall ensure that manhole design is consistent with "Pre-cast Concrete Sewer Manhole" #420-1, revised January 1, 2004 and #420-2, revised January 1, 2001, "Offset Manhole for 8" – 30" Pipe" #421 (1998), and "Sewer Manhole and Cover Frame Adjustment" #422, revised January 1, 2001, published by the Maricopa Association of Governments; and "Manholes and Appurtenant Items" (WWM 201 through WWM 211, except WWM 204, 205, and 206), revised July 2002, published by Pima County Wastewater Management. This material is part of the material incorporated by reference in subsection (D)(1)(b).

d. The applicant shall not locate manholes in areas subject to more than incidental runoff from rain falling in the immediate vicinity unless the manhole cover assembly is designed to restrict or eliminate stormwater inflow.

e. The applicant shall test each manhole using one of the following test protocols:
   i. Watertightness testing by filling the manhole with water. The applicant shall ensure that the drop in water level following presoaking does not exceed 0.0034 of total manhole volume per hour;
   ii. Negative air pressure testing using the "Standard Test Method for Concrete Sewer Manholes by Negative Air Pressure (Vacuum) Test, C1244-02e1 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007, or obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; or
   iii. Holiday testing of a lined manhole constructed with uncoated rebar using the "High-Voltage Electrical Inspection of Pipeline Coatings, RP0274-2004 (2004)," published by the National Association of Corrosion Engineers (NACE International). This material is incorporated by reference as modified below, does not include any later amendments or editions of the incorporated material and may be viewed at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or obtained from NACE International, 1440 South Creek Drive, Houston, Texas 77084-4906. The following substitutions apply:
      (1) Where the word "metal" is used in the standard, use the word "surface" instead; and
      (2) Where the words "pipe" or "pipeline" are

used, use the word "manhole" instead.

f. The applicant shall perform manhole testing under subsection (D)(3)(e) after installation of the manhole cone or top riser to verify watertightness integrity of the manhole from the top of the cone or riser down.
   i. Upon satisfactory test results, the applicant shall install the manhole ring and any spacers, complete the joints, and seal the manhole to a watertight condition.
   ii. If the applicant can install the manhole cone or top riser, spacers, and ring to final grade without disturbance or adjustment by later construction, the applicant may perform the testing from the top of the manhole ring on down.

g. The applicant shall locate a manhole to provide adequate visibility and vehicular maintenance accessibility following construction.

4. Force mains. An applicant may install a force main if it meets the following design, installation, and testing requirements. The applicant shall:
   a. Design force mains to maintain a minimum flow velocity of 3 feet per second and a maximum flow velocity of 7 feet per second. The applicant may design for sustained periods of flow above 7 feet per second, if the applicant justifies the design using the process specified in R18-9-A312(G);
   b. Ensure that force mains have the appropriate valves and controls required to prevent drainback to the lift station. If drainback is necessary during cold weather to prevent freezing, the control system may allow manual or automatic drainback;
   c. Incorporate air release valves or other appropriate components in force mains at all high points along the line to eliminate air accumulation. If engineering calculations provided by the applicant demonstrate that air will not accumulate in a given high point under typical flow conditions, the Department shall waive the requirement for an air release valve;
   d. Design restrained joints or thrust blocks on force mains to accommodate water hammer, surge control, and to prevent excessive movement of the force main. Submitted construction plans shall show restrained joint or thrust block locations and details;
   e. If a force main is proposed to discharge directly to a sewage treatment facility without entering a flow equalization basin, include in the Notice of Intent to Discharge a statement from the owner or operator of the sewage treatment facility that the design is acceptable;
   f. Design a force main to withstand a pressure of 50 pounds per square inch or more above the design working pressure for two hours and test upon completion to ensure no leakage;
   g. Supply flow to a force main using a lift station that meets the requirements of subsection (D)(5); and
   h. Ensure that force mains are designed to control odor.

5. Lift stations. An applicant shall:
   a. Secure a lift station to prevent tampering and affix on its exterior, or on the nearest vertical object if the lift station is entirely below grade, at least one warning sign that includes the 24-hour emergency phone number of the owner or operator of the collection system;
   b. Protect lift stations from physical damage from a 100-year flood event. An applicant shall not construct a lift station in a floodway;
   c. Lift station wet well design.
      i. Ensure that the minimum wet well volume in gallons is 1/4 of the product of the minimum pump cycle time, in minutes, and the total pump capacity, in gallons per minute;
      ii. Protect the wet well against corrosion to provide at least a 20-year operational life;
      iii. Ensure that wet well volume does not allow the sewage retention time to exceed 30 minutes unless the sewage is aerated, chemicals are added to prevent or eliminate hydrogen sulfide formation, or adequate ventilation is provided. Notwithstanding these measures, the applicant shall not allow the septic condition of the sewage to adversely affect downstream collection systems or sewage treatment facility performance;
      iv. Ensure that excessively high or low levels of sewage in the wet well trigger an audible or visible alarm at the wet well site and at the system control center;
      v. Ensure that a wet well designed to accommodate more than 5000 gallons per day has a horizontal cross-sectional area of at least 20 square feet; and
      vi. Ensure that lift stations are designed to prevent odor from emanating beyond the lift station site;
   d. Equip a lift station wet well with at least two pumps. The applicant shall ensure that:
      i. The pumps are capable of passing a 2.5-inch sphere or are grinder pumps;
      ii. The lift station is capable of operating at design flow with any one pump out of service; and
      iii. Piping, valves, and controls are arranged to allow independent operation of each pump;
   e. Not use suction pumps if the sewage lift is more than 15 feet. The applicant shall ensure that other types of pumps are self-priming and that pump water brake horsepower is at least 0.00025 times the product of the required discharge, in gallons per minute, and the required total dynamic head, in feet; and
   f. For lift stations receiving an average flow of more than 10,000 gallons per day, include a standby power source and redundant wastewater level controls in the lift station design that will provide immediate service and remain available for 24 hours per day if the main power source or controls fail.

6. Depressed sewers. An applicant shall:
   a. Size the depressed sewer to attain a minimum velocity of 3 feet per second through all barrels of the depressed sewer when the flow equals or exceeds the design daily peak dry weather flow,
   b. Design the depressed sewer to convey the sewage flow through at least two parallel pipes at least 6 inches in diameter,
   c. Include an inlet and outlet structure at each end of the inverted sewer,
   d. Design the depressed sewer so that the barrels are brought progressively into service as flow increases to its design value, and

e. Design the depressed sewer to minimize release of odors to the atmosphere.

E. Additional Discharge Authorization requirements. An applicant shall:

1. Supply a signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department that provides the following:
   a. Confirmation that the project was completed in compliance with the requirements of this Chapter, as described in the plans and specifications corresponding to the Construction Authorization issued by the Director, or with changes that are reflected in as-built plans submitted with the Engineer's Certificate of Completion;
   b. As-built plans, if required, that are properly identified and numbered; and
   c. Satisfactory field test results from deflection, leakage, and uniform slope testing;
2. Provide any other relevant information required by the Department to determine that the facility conforms to the terms of the 4.01 General Permit; and
3. Provide a signed certification on a form approved by the Department that:
   a. Confirms that an operation and maintenance manual exists for the sewage collection system;
   b. Confirms that the operation and maintenance manual addresses components of operation and maintenance specified on the certification form;
   c. Provides the 24-hour emergency number of the owner or operator of the sewage collection system; and
   d. Provides an address where the operation and maintenance manual is maintained and confirms that the manual is available for inspection at that address by the Department on request.

F. Operation and maintenance requirements. The permittee shall:

1. Operate the new sewage collection system or expansion of an existing sewage collection system involving new construction using the operation and maintenance manual certified by the owner or operator in subsection (E)(3), to meet the performance standards specified in subsection (B), unless the permittee is operating the sewage collection system under a CMOM Plan under the general permit established in R18-9-C305;
2. Ensure that the sewage collection system is operated according to the operator certification requirements in 18 A.A.C. 5, Article 1; and
3. For safety during operation and maintenance of lift station and other confined space components of the sewage collection system, follow all applicable state and federal confined space entry requirements.

G. Recordkeeping. A person owning or operating a facility permitted under this Section shall maintain the documents listed in subsection (E) for the life of the facility and make them available to the Department upon request.

H. Repairs.

1. A Notice of Intent to Discharge is not required for sewage collection system repairs. Repairs include work performed in response to deterioration or damage of existing structures, devices, and appurtenances with the intent to maintain or restore the system to its original design flow and operational characteristics. Repairs do not include changes in vertical or horizontal alignment.
2. Components used in the repair shall meet the design, installation, and operational requirements of this Section.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E302. 4.02 General Permit: Septic Tank with Disposal by Trench, Bed, Chamber Technology, or Seepage Pit, Less Than 3000 Gallons Per Day Design Flow

A. A 4.02 General Permit allows for the construction and operation of a system with less than 3000 gallons per day design flow consisting of a septic tank dispensing wastewater to an approved means of disposal described in this Section. Only gravity flow of wastewater from the septic tank to the disposal works is authorized by this general permit.

1. The standard septic tank and disposal works design specified in the 4.02 General Permit serves sites where no site limitations are identified by the site investigation conducted under R18-9-A310.
2. If site conditions allow, this general permit authorizes the discharge of wastewater from a septic tank meeting the requirements of R18-9-A314 to one of the following disposal works:
   a. Trench,
   b. Bed,
   c. Chamber technology, or
   d. Seepage pit.

B. Performance. An applicant shall design a system consisting of a septic tank and one of the disposal works listed in subsection (A)(2) so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Design and installation requirements.

1. General provisions. In addition to the applicable requirements in R18-9-A312, the applicant shall:
   a. Ensure that the septic tank meets the requirements specified in R18-9-A314;
   b. Before placing aggregate or disposal pipe in a prepared excavation, remove all smeared or compacted surfaces from trenches by raking to a depth of 1 inch and removing loose material. The applicant shall:
      i. Place aggregate in the trench to the depth and grade specified in subsection (C)(2);
      ii. Place the drain pipe on aggregate and cover it with aggregate to the minimum depth specified in subsection (C)(2); and
      iii. Cover the aggregate with landscape filter material, geotextile, or similar porous material to prevent filling of voids with earth backfill;
   c. Use a grade board stake placed in the trench to the depth of the aggregate if the disposal pipe is constructed of drain tile or flexible pipe that will not maintain alignment without continuous support;
   d. Disposal pipe. If two or more disposal pipes are installed, install a distribution box approved by the Department of sufficient size to receive all lateral

lines and flows at the head of each disposal works and:

i. Ensure that the inverts of all outlets are level and the invert of the inlet is at least 1 inch above the outlets;
ii. Design distribution boxes to ensure equal flow and install the boxes on a stable level surface such as a concrete slab or native or compacted soil; and
iii. Protect concrete distribution boxes from corrosion by coating them with an appropriate bituminous coating, constructing the boxes with concrete that has a 15 to 18 percent fly ash content, or by using other equivalent means;

e. Construct all lateral pipes running from a distribution box to the disposal works with watertight joints and ensure that multiple disposal laterals, wherever practical, are of uniform length;
f. Lay pipe connections between the septic tank and a distribution box on natural ground or compact fill and construct the pipe connections with watertight joints;
g. Construct steps within distribution line trenches or beds, if necessary, to maintain a level disposal pipe on sloping ground. The applicant shall construct the lines between each horizontal section with watertight joints and install them on natural or unfilled ground; and
h. Ensure that a disposal works consisting of trenches, beds, chamber technology, or seepage pits is not paved over or covered by concrete or any material that can reduce or inhibit possible evaporation of wastewater through the soil to the land surface or oxygen transport to the soil absorption surfaces.

2. Trenches.
a. The applicant shall calculate the trench absorption area as the total of the trench bottom area and the sum of both trench sidewall areas to a maximum depth of 48 inches below the bottom of the disposal pipe.
b. The applicant shall ensure that trench bottoms and disposal pipe are level. The applicant shall calculate trench sizing from the soil absorption rate specified under R18-9-A312(D) and the design flow established in R18-9-A312(B).
c. The following design criteria for trenches apply:

Trenches	**Minimum**	**Maximum**
1. Number of trenches	1 (2 are recommended)	No Maximum
2. Length of trench[1]	----	100 feet
3. Bottom width of trench	12 inches	36 inches
4. Trench absorption area (sq. ft. of absorption area per linear foot of trench)	No Minimum	11 sq. ft.
5. Depth of cover over aggregate surrounding disposal pipe	9 inches	24 inches[2]
6. Thickness of aggregate material over disposal pipe	2 inches	2 inches
7. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
8. Slope of disposal pipe	Level	Level
9. Disposal pipe diameter	3 inches	4 inches
10. Spacing of trenches (measured between nearest sidewalls)	2 times effective depth[3] or five feet, whichever is greater	No Maximum

Notes:
[1] If unequal trench lengths are used, proportional distribution of wastewater is required.
[2] For more than 24 inches, Standard Dimensional Ratio 35 or equivalent strength pipe is required.
[3] The effective depth is the distance between the bottom of the disposal pipe and the bottom of the trench bed.

d. The applicant may substitute clean, durable, crushed, and washed recycled concrete for aggregate if noted in design documents and the trench absorption area calculation excludes the trench bottom.

3. Beds. An applicant shall:
a. If a bed is installed, use the soil absorption rate specified in R18-9-A312(D) for "SAR, Bed. The applicant may, in computing the bed bottom absorption area, include the bed bottom and the perimeter sidewall area not more than 36 inches below the disposal pipe;
b. Comply with the following design criteria for beds:

Gravity Beds	**Minimum**	**Maximum**
1. Number of disposal pipes	2	No Maximum
2. Length of bed	No Minimum	100 feet
3. Distance between disposal pipes	4 feet	6 feet
4. Spacing of beds measured between nearest sidewalls	2 times effective depth[1] or 5 feet, whichever is greater	No Maximum
5. Width of bed	10 feet	12 feet
6. Distance from disposal pipe to sidewall	3 feet	3 feet
7. Depth of cover over disposal pipe	9 inches	14 inches
8. Thickness of aggregate material under disposal pipe	12 inches	No Maximum
9. Thickness of aggregate material over disposal pipe	2 inches	2 inches
10. Slope of disposal pipe	Level	Level

11. Disposal pipe diameter	3 inches	4 inches

Note:
[1] The effective depth is the distance between the bottom of the disposal pipe and the bottom of the bed.

4. Chamber technology. An applicant shall:
   a. Calculate an effective chamber absorption area to size the disposal works area and determine the number of chambers needed. The effective absorption area of each chamber is calculated as follows:
      $A = (1.8 \times B \times L) + (2 \times V \times L)$
      i. "A" is the effective absorption area of each chamber,
      ii. "B" is the exterior width of the bottom of the chamber,
      iii. "V" is the vertical height of the louvered sidewall of the chamber, and
      iv. "L" is the length of the chamber;
   b. Calculate the disposal works size and number of chambers from the effective absorption area of each chamber and the soil absorption rates specified in R18-9-A312(D);
   c. Ensure that the sidewall of the chamber provides at least 35 percent open area for sidewall credit and that the design and construction minimizes the movement of fines into the chamber area. The applicant shall not use filter fabric or geotextile against the sidewall openings.
5. Seepage pits. If allowed by R18-9-A311(B)(1), the applicant shall:
   a. Design a seepage pit to comply with R18-9-A312(E)(1) for minimum vertical separation distance;
   b. Ensure that multiple seepage pit installations are served through a distribution box approved by the Department or connected in series with a watertight connection laid on undisturbed or compacted soil. The applicant shall ensure that the outlet from the pit has a sanitary tee with the vertical leg extending at least 12 inches below the inlet;
   c. Ensure that each seepage pit is circular and has an excavated diameter of 4 to 6 feet. If multiple seepage pits are installed, ensure that the minimum spacing between seepage pit sidewalls is 12 feet or three times the diameter of the seepage pit, whichever is greater. The applicant may use the alternative design procedure specified in R18-9-A312(G) for a proposed seepage pit more than 6 feet in diameter;
   d. For a gravel filled seepage pit, backfill the entire pit with aggregate. The applicant shall ensure that each pit has a breather conductor pipe that consists of a perforated pipe at least 4 inches in diameter, placed vertically within the backfill of the pit. The pipe shall extend from the bottom of the pit to within 12 inches below ground level;
   e. For a lined, hollow seepage pit, lay a concrete liner or a liner of a different protective material in the pit on a firm foundation and fill excavation voids behind the liner with at least 9 inches of aggregate;
   f. For the cover of a lined seepage pit, use an approved one or two piece reinforced concrete slab with a minimum compressive strength of 2500 pounds per square inch. The applicant shall ensure that the cover:
      i. Is at least 5 inches thick and designed to support an earth load of at least 400 pounds per square foot;
      ii. Has a 12-inch square or diameter minimum access hole with a plug or cap that is coated on the underside with an protective bituminous seal, constructed of concrete with 15 percent to 18 percent fly ash content, or made of other nonpermeable protective material; and
      iii. Has a 4 inch or larger inspection pipe placed vertically not more than 6 inches below ground level;
   g. Ensure that the top of the seepage pit cover is 4 to 18 inches below the surface of the ground;
   h. Install a vented inlet fitting in every seepage pit to prevent flows into the seepage pit from damaging the sidewall. An applicant may use a 1/4 bend fitting placed through an opening in the top of the slab cover if a one or two piece concrete slab cover inlet is used;
   i. Bore seepage pits five feet deeper than the proposed pit depth to verify underlying soil characteristics and backfill the five feet of overdrill with low permeability drill cuttings or other suitable material;
   j. Backfill seepage pits that terminate in gravelly, coarse sand zones five feet above the beginning of the zone with low permeability drill cuttings or other suitable material;
   k. Determine the minimum sidewall area for a seepage pit from the design flow and the soil absorption rate derived from the testing procedure described in R18-9-A310(G). The effective absorption surface for a seepage pit is the sidewall area only. The sidewall area is calculated using the following formula:
      $A = 3.14 \times D \times H$
      i. "A" is the minimum sidewall area in square feet needed for the design flow and soil absorption rate for the installation,
      ii. "D" is the diameter of the proposed seepage pit in feet,
      iii. "H" is the vertical height in feet in the seepage pit through which wastewater infiltrates native soil. The applicant shall ensure that H is at least 10 feet for any seepage pit.

D. Operation and maintenance. The permittee shall follow the applicable operation and maintenance requirements in R18-9-A313.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E303. 4.03 General Permit: Composting Toilet, Less Than 3000 Gallons Per Day Design Flow

A. A 4.03 General Permit allows for the use of a composting toilet with less than 3000 gallons per day design flow.
   1. Definition. For purposes of this Section, "composting toilet" means a manufactured turnkey or kit form treatment technology that receives human waste from a waterless toilet directly into an aerobic composting chamber where dehydration and biological activity reduce the waste vol-

ume and the content of nutrients and harmful microorganisms to an appropriate level for later disposal at the site or by other means.

2. An applicant may use a composting toilet if:
   a. Limited water availability prevents use of other types of on-site wastewater treatment facilities,
   b. Environmental constraints prevent the discharge of wastewater or nutrients to a sensitive area,
   c. Inadequate space prevents use of other systems,
   d. Severe site limitations exist that make other forms of treatment or disposal unacceptable, or
   e. The applicant desires maximum water conservation.
3. A permittee may use a composting toilet only if:
   a. Wastewater is managed as provided in this Section and, if gray water is separated and reused, the gray water reuse complies with18 A.A.C. 9, Article 7; and
   b. Soil conditions support subsurface disposal of all wastewater sources.

B. Restrictions.
1. A permittee shall ensure that no more than 50 persons per day use the composting toilet.
2. A composting toilet shall only receive human excrement unless the manufacturer's specifications allow the deposit of kitchen or other wastes into the toilet.

C. Performance. An applicant shall ensure that:
1. The composting toilet provides containment to prevent the discharge of toilet contents to the native soil except leachate, which may drain to the wastewater disposal works described in subsection (F);
2. The composting toilet limits access by vectors to the contained waste; and
3. Wastewater is disposed into the subsurface to prevent any wastewater from surfacing.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit the following information:
1. Composting toilet.
   a. The name and address of the composting toilet system manufacturer;
   b. A copy of the manufacturer's warranty, and the specifications for installation operation, and maintenance;
   c. The product model number;
   d. Composting rate, capacity, and waste accumulation volume calculations;
   e. Documentation of listing by a national listing organization indicating that the composting toilet meets the stated manufacturer's specifications for loading, treatment performance, and operation, unless the composting toilet is listed under R18-9-A309(E) or is a component of a reference design approved by the Department;
   f. The method of vector control;
   g. The planned method and frequency for disposing the composted human excrement residue; and
   h. The planned method for disposing of the drainage from the composting unit; and
2. Wastewater.
   a. The number of bedrooms in the dwelling or persons served on a daily basis, as applicable, and the corresponding design flow of the disposal works for the wastewater;
   b. The results from soil evaluation or percolation testing that adequately characterize the soils into which the wastewater will be dispersed and the locations of soil evaluation and percolation testing on the site plan; and
   c. The design for the disposal works in subsection (F), including the location of the interceptor, the location and configuration of the trench or bed used for wastewater dispersal, the location of connecting wastewater pipelines, and the location of the reserve area.

E. Design requirements for a composting toilet. An applicant shall ensure that:
1. The composting chamber is watertight, constructed of solid durable materials not subject to excessive corrosion or decay, and is constructed to exclude access by vectors;
2. The composting chamber has airtight seals to prevent odor or toxic gas from escaping into the building. The system may be vented to the outside;
3. The capacity of the chamber and rate of composting are calculated based on:
   a. The lowest monthly average chamber temperature; or
   b. The yearly average chamber temperature, if the composting toilet is designed to compost on a yearly cycle or longer; and
4. The composting system provides adequate storage of all waste produced during the months when the average temperature is below 55°F, unless a temperature control device is installed to increase the composting rate and reduce waste volume.

F. Design requirements for the disposal works.
1. Interceptor. An applicant shall ensure that the design complies with the following:
   a. Wastewater passes into an interceptor before it is conducted to the subsurface for dispersal;
   b. The interceptor is designed to remove grease, oil, fibers, and solids to ensure long-term performance of the trench or bed used for subsurface dispersal;
   c. The interceptor is covered to restrict access and eliminate habitat for mosquitoes and other vectors; and
   d. Minimum interceptor size is based on design flow.
      i. For a dwelling, the following apply:

No. of Bedrooms	Design Flow (gallons per day)	Minimum Interceptor Size (gallons)	
		Kitchen Wastewater Only (All gray water sources are collected and reused)	Combined Non-Toilet Wastewater (Gray water is not separated and reused)
1 (7 fixture units or less)	90	42	200
1-2 (greater than 7 fixture units)	180	84	400
3	270	125	600
4	330	150	700
5	380	175	800

6	420	200	900
7	460	225	1000

ii. For other than a dwelling, minimum interceptor size in gallons is 2.1 times the design flow from Table 1, Unit Design Flows.

2. Dispersal of wastewater. An applicant shall ensure that the design complies with the following:
   a. A trench or bed is used to disperse the wastewater into the subsurface;
   b. Sizing of the trench or bed is based on the design flow of wastewater as determined in subsection (F)(1)(d) and an SAR determined under R18-9-A312(D);
   c. The minimum vertical separation from the bottom of the trench or bed to a limiting subsurface condition is at least 5 feet; and
   d. Other aspects of trench or bed design follow R18-9-E302, as applicable.
3. Setback distances. Setback distances are no less than 1/4 of the setback distances specified in R18-9-A312(C), but not less than 5 feet, except the setback distance from wells is 100 feet.

G. Operation and maintenance requirements. A permittee shall:
1. Composting toilet.
   a. Provide adequate mixing, ventilation, temperature control, moisture, and bulk to reduce fire hazard and prevent anaerobic conditions;
   b. Follow manufacturer's specifications for addition of any organic bulking agent to control liquid drainage, promote aeration, or provide additional carbon;
   c. Follow the manufacturer's specifications for operation and maintenance regarding movement of material within the composting chamber;
   d. If batch system containers are mounted on a carousel, place a new container in the toilet area if the previous one is full;
   e. Ensure that only human waste, paper approved for septic tank use, and the amount of bulking material required for proper maintenance is introduced to the composting chamber. The permittee shall remove all other materials or trash. If allowed by the manufacturer's specifications the permittee may add, other nonliquid compostable food preparation residues to the toilet;
   f. Ensure that any liquid end product is:
      i. Sprayed back onto the composting waste material;
      ii. Removed by a person who licensed a vehicle under 18 A.A.C. 13, Article 11; or
      iii. Is drained to the interceptor described in subsection (F);
   g. Remove and dispose of composted waste as necessary, using a person who licensed a vehicle under 18 A.A.C. 13, Article 11 if the waste is not placed in a disposal area for burial or used on-site as mulch;
   h. Before ending use for an extended period take measures to ensure that moisture is maintained to sustain bacterial activity and free liquids in the chamber do not freeze; and
   i. After an extended period of non-use, empty the composting chamber of solid end product and inspect all mechanical components to verify that the mechanical components are operating as designed;
2. Wastewater Disposal Works.
   a. Ensure that the interceptor is maintained regularly according to manufacturer's instructions to prevent grease and solid wastes from impairing performance of the trench or bed used for dispersal of wastewater, and
   b. Protect the area of the trench or bed from soil compaction or other activity that will impair dispersal performance.

H. Reference design.
1. An applicant may use a composting toilet that achieves the performance requirements in subsection (C) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E304. 4.04 General Permit: Pressure Distribution System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.04 General Permit allows for the use of a pressurized distribution of wastewater system with a design flow less than 3000 gallons per day that treats wastewater to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "pressure distribution system" means a tank, pump, controls, and piping that conducts wastewater under pressure in controlled amounts and intervals to a bed or trench or other means of distribution authorized by a general permit for an on-site wastewater treatment facility.
2. An applicant may use a pressure distribution system if a gravity flow system is unsuitable, inadequate, unfeasible, or cost prohibitive because of site limitations or other conditions, or if needed to optimally distribute wastewater.

B. Performance. An applicant shall ensure that a pressure distribution system:
1. Disperses wastewater so that:
   a. Loading rates are optimized for the intended purpose, and
   b. The wastewater is delivered under pressure and evenly distributed within the disposal works, and
2. Prevents ponding on the land surface.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), the applicant shall submit:
1. A copy of operation, maintenance, and warranty materials for the principal components; and
2. A copy of dosing specifications, including pump curves, dispersing component details, and float control settings.

D. Design requirements.
1. Pumps. An applicant shall ensure that pumps used in the on-site wastewater treatment facility:
   a. Are rated for wastewater service by the manufacturer and certified by Underwriters Laboratories;
   b. Achieve the minimum design flow rate and total dynamic head requirements for the particular site; and

c. Incorporate a quick disconnect using compression-type unions for pressure connections. The applicant shall ensure that:
   i. Quick-disconnects are accessible in the pressure piping, and
   ii. A pump has adequate lift attachments for removal and replacement of the pump and switch assembly without entering the dosing tank or process chamber.

2. Switches, controls, alarms, timers, and electrical components. An applicant shall ensure that:
   a. Switches and controls accommodate the minimum and maximum dose capacities of the distribution network design. The applicant shall not use pressure diaphragm level control switches;
   b. Fail-safe controls that can be tested in the field are used to prevent discharge of inadequately treated wastewater. The applicant shall include counters or flow meters if critical to control functions, such as timed dosing;
   c. Control panels and alarms:
      i. Are mounted in an exterior location visible from the dwelling,
      ii. Provide manual pump switch and alarm test features, and
      iii. Include written instructions covering standard operation and alarm events;
   d. Audible and visible alarms are used for all critical control functions, such as pump failures, treatment failures, and excess flows. The applicant shall ensure that:
      i. The visual portion of the signal is conspicuous from a distance 50 feet from the system and its appurtenances;
      ii. The audible portion of the signal is between 70 and 75 db at 5 feet and is discernible from a distance of 50 feet from the system and its appurtenances; and
      iii. Alarms, test features, and controls are on a non-dedicated electrical circuit associated with a frequently used household lighting fixture and separate from the dedicated circuit for the pump;
   e. All electrical wiring complies with the National Electrical Code, 2005 Edition, published by the National Fire Protection Association. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. The applicant shall ensure that:
      i. Connections are made using National Electrical Manufacturers Association (NEMA) 4x junction boxes certified by Underwriters Laboratories; and
      ii. All controls are in NEMA 3r, 4, or 4x enclosures for outdoor use.

3. Dosing tanks and wastewater distribution components.
   a. An applicant shall:
      i. Design dosing tanks to withstand anticipated internal and external loads under full and empty conditions, and design concrete tanks to meet the "Standard Specification for Precast Concrete Water and Wastewater Structures, C913-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
      ii. Design dosing tanks to be easily accessible and have secured covers;
      iii. Install risers to provide access to the inlet and outlet of the tank and to service internal components;
      iv. Ensure that the volume of the dosing tank accommodates bottom depth below maximum drawdown, maximum design dose, including any drainback, volume to high water alarm, and a reserve volume above the high water alarm level that is not less than the daily design flow volume. If the tank is time dosed, the applicant shall ensure that the combined surge capacity and reserve volume above the high water alarm is not less than the daily design flow volume;
      v. Ensure that dosing tanks are watertight and anti-buoyant;
      vi. Design the wastewater distribution components to withstand system pumping pressures;
      vii. Design the wastewater distribution system to allow air to purge from the system;
      viii. Design pressure piping to minimize freezing during cold weather;
      ix. Ensure that the end of each wastewater distribution line is accessible for maintenance;
      x. Ensure that orifices emit the design discharge rate uniformly throughout the wastewater distribution system; and
      xi. Design orifices using orifice shields to provide proper distribution of wastewater to the receiving medium.
   b. An applicant may use a septic tank second compartment or a second septic tank in series as a dosing tank if all dosing tank requirements of this Section are met and a screened vault is used instead of the septic tank effluent filter.

4. Design SAR. If the site conditions of the property for the on-site wastewater treatment facility do not require pressure distribution, but an applicant chooses to use pressure distribution, the applicant shall use a design SAR for the absorption surfaces in the disposal works that is not more than 1.10 times the adjusted SAR determined in R18-9-A312(D).

E. Additional Discharge Authorization requirements. An applicant shall obtain copies of instructions for the critical controls of the system from the person who installed the pressure distri-

bution system. The applicant shall submit one copy of the instructions with the information required in subsection (C).

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), a permittee shall ensure that:

1. The operation and maintenance manual for the on-site wastewater treatment facility that supplies the wastewater to the pressure distribution system specifies inspection and maintenance needed for the following items:
   a. Sludge level in the bottom of the treatment and dosing tanks,
   b. Watertightness,
   c. Condition of electrical and mechanical components, and
   d. Piping and other components functioning within design limits;
2. All critical control functions are specified in the operation and maintenance manual for testing to demonstrate compliance with design specifications, including:
   a. Alarms, test features, and controls;
   b. Float switch level settings;
   c. Dose rate, volume, and frequency, if applicable;
   d. Distal pressure or squirt height, if applicable; and
   e. Voltage test on pumps, motors, and controls, as applicable;
3. The finished grade is observed and maintained for proper surface drainage. The applicant shall observe the levelness of the tank for differential settling. If there is settling, the applicant shall grade the facility to maintain surface drainage.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E305. 4.05 General Permit: Gravelless Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.05 General Permit allows for the use of a gravelless trench with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "gravelless trench" means a disposal technology characterized by installation of a proprietary pipe and geocomposite or other substitute media into native soil instead of the distribution pipe and aggregate fill used in a trench allowed in R18-9-E302.
2. A permittee may use a gravelless trench if suitable gravel or volcanic rock aggregate is unavailable, excessively expensive, or if adverse site conditions make movement of gravel difficult, damaging, or time consuming.

B. Performance. An applicant shall design a gravelless trench so that treated wastewater released to the native soil meets the following criteria:

1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit the following:

1. The soil absorption area that would be required if a conventional disposal trench filled with aggregate was used at the site,
2. The configuration and size of the proposed gravelless disposal works, and
3. The manufacturer's installation instructions and warranty of performance for absorbing wastewater into the native soil.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:

1. Ensure that the top of the gravelless disposal pipe or similar disposal mechanism is at least 6 inches below the surface of the native soil and 12 to 36 inches below finished grade if approved fill is placed on top of the installation;
2. Calculate the infiltration surface as follows:
   a. For 8-inch diameter pipe, 2 square feet of absorption area is allowed per linear foot;
   b. For 10-inch diameter pipe, 3 square feet of absorption area is allowed per linear foot;
   c. For bundles of two pipes of the same diameter, the absorption area is calculated as 1.67 times the absorption area of one pipe; and
   d. For bundles of three pipes of the same diameter, the absorption area is calculated as 2.00 times the absorption area of one pipe;
3. Use a pressure distribution system meeting the requirements of R18-9-E304 in medium sand, coarse sand, and coarser soils; and
4. Construct the drainfield of material that will not decay, deteriorate, or leach chemicals or byproducts if exposed to sewage or the subsurface soil environment.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:

1. Install the gravelless pipe material according to manufacturer's instructions if the instructions are consistent with this Chapter,
2. Ensure that the installed disposal system can withstand the physical disturbance of backfilling and the load of any soil cover above natural grade placed over the installation, and
3. Shape any backfill and soil cover in the area of installation to prevent settlement and ponding of rainfall for the life of the disposal works.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade in the vicinity of the gravelless disposal works for maintenance of proper drainage and protection from damaging loads.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E306. 4.06 General Permit: Natural Seal Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.06 General Permit allows for the use of a natural seal evapotranspiration bed with less than 3000 gallons per day design flow receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "natural seal evapotranspiration bed" means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system, contained on the bottom and sidewalls by an engineered liner consisting of natural soil and clay materials.
2. An applicant may use a natural seal evapotranspiration bed if site conditions restrict soil infiltration or require reduction of the volume of wastewater discharged to the native soil underlying the natural seal liner.

B. Restrictions. Unless a person provides design documentation to show that a natural seal evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of the average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a natural seal evapotranspiration bed:
1. Minimizes discharge to the native soil through the natural seal liner,
2. Maximizes wastewater disposed to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. An applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and shall calculate the bed design based on the capillary rise of the bed media, following the "Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2000)," incorporated by reference in R18-9-E307(E), and the anticipated maximum frost depth;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months and the design seepage rate;
4. Ensure that the natural seal liner is a durable, low-hydraulic conductivity liner and is accompanied by the liner performance specification and calculations for bottom and sidewall seepage rate;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches and ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;
      ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
      iii. The pH of the topsoil is between 5.5 and 8.0;
      iv. The plasticity index of the topsoil is between 3 and 15; and
      v. The topsoil contains approximately 1-1/2 percent organic matter, by dry weight, either natural or added;
   b. If landscaping material other than topsoil is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1"	100
1/2"	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt- and drought-tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to determine the level of the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the natural seal evapotranspiration bed liner to the seasonal high water table is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. The liner covers the bottom and all sidewalls of the bed and is installed on a stable base according to the manufacturer's installation specifications;
2. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
3. The liner is leak tested under the supervision of an Arizona-registered professional engineer to confirm the design leakage rate; and
4. A 2- to 4-inch layer of 1/2- to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall ensure that the filter cloth is placed on top of the gravel or crushed stone to prevent sand from settling into the gravel or crushed stone.

G. Additional Discharge Authorization requirements. An applicant shall submit the satisfactory results of the leakage test required under subsection (F)(3) to the Department before the Department issues the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed, and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E307. 4.07 General Permit: Lined Evapotranspiration Bed, Less Than 3000 Gallons Per Day Design Flow

A. A 4.07 General Permit allows for the use of a lined evapotranspiration bed receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "lined evapotranspiration bed" means a disposal technology characterized by a bed of sand or other media with an internal wastewater distribution system contained on the bottom and sidewalls by an impervious synthetic liner.
2. An applicant may use a lined evapotranspiration bed if site conditions restrict soil infiltration or require reduction or elimination of the volume of wastewater or nitrogen load discharged to the native soil.
3. Provision of a reserve area is not required for a lined evapotranspiration bed.

B. Restrictions. Unless a person provides design documentation to show that a lined evapotranspiration bed will properly function, the person shall not install this technology if:
1. Average minimum temperature in any month is 20° F or less,
2. Over 1/3 of average annual precipitation falls in a 30-day period, or
3. Design flow exceeds net evaporation.

C. Performance. An applicant shall ensure that a lined evapotranspiration bed:
1. Prevents discharge to the native soil by a synthetic liner,
2. Attains full disposal of wastewater to the atmosphere by evapotranspiration, and
3. Prevents ponding of wastewater on the bed surface and maintains an interval of unsaturated media directly beneath the bed surface.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Capillary rise potential test results for the media used to fill the evapotranspiration bed, unless sand meeting a D_{50} of 0.1 millimeter (50 percent by weight of grains equal to or smaller than 0.1 millimeter in size) is used; and
2. Water mass balance calculations used to size the evapotranspiration bed.

E. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall:
1. Ensure that the evapotranspiration bed is from 18 to 36 inches deep and calculate the bed design on the basis of the capillary rise of the bed media, according to the "Standard Test Method for Capillary-Moisture Relationships for Coarse- and Medium-Textured Soils by Porous-Plate Apparatus, D2325-68 (2003)," published by the American Society for Testing and Materials and the anticipated maximum frost depth. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
2. Ensure the media is sand or other durable material;
3. Base design area calculations on a water mass balance for the winter months;
4. Ensure that the evapotranspiration bed liner is a durable, low hydraulic conductivity synthetic liner that has a calculated bottom area and sidewall seepage rate of less than 550 gallons per acre per day;
5. If a surfacing layer is used, use topsoil, dark cinders, decomposed granite, or similar landscaping material placed to a maximum depth of 2 inches. The applicant shall ensure that:
   a. If topsoil is used as a surfacing layer for growth of landscape plants:
      i. The topsoil is a fertile, friable soil obtained from well-drained arable land;
      ii. The topsoil is free of nut grass, refuse, roots, heavy clay, clods, noxious weeds, or any other material toxic to plant growth;
      iii. The pH of the topsoil is between 5.5 and 8.0;
      iv. The plasticity index of the topsoil is between 3 and 15; and
      v. The topsoil contains approximately 1 1/2 percent organic matter, by dry weight, either natural or added;
   b. If another landscaping material is used as a surfacing layer, the material meets the following gradation:

Sieve Size	Percent Passing
1"	100
1/2"	95-100
No. 4	90-100
No. 10	70-100
No. 200	15-70

6. Use shallow-rooted, non-invasive, salt and drought tolerant evergreens if vegetation is planted on the evapotranspiration bed;
7. Install at least two observation ports to allow determination of the depth to the liquid surface of wastewater within the evapotranspiration bed;
8. Design the bed to pump out the saturated zone if accumulated salts or a similar condition impairs bed performance; and
9. Instead of the minimum vertical separation required under R18-9-A312(E), ensure that the minimum vertical separation from the bottom of the evapotranspiration bed liner to the surface of the seasonal high water table or impervious layer or formation is at least 12 inches.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:
1. All liner seams are factory fabricated or field welded according to manufacturer's specifications. The applicant shall ensure that:
2. The liner covers the bottom and all sidewalls of the bed and is cushioned on the top and bottom with layers of sand at least 2 inches thick or other puncture-protective material;
3. If the inlet pipe passes through the liner, the joint is tightly sealed to minimize leakage during the operational life of the facility;
4. The liner is leak tested under the supervision of an Arizona-registered professional engineer; and
5. A 2- to 4-inch layer of one-half to 1-inch gravel or crushed stone is placed around the distribution pipes within the bed. The applicant shall place filter cloth on top of the gravel or crushed stone to prevent sand from settling into the crushed stone or gravel.

G. Additional Discharge Authorization requirements. An applicant shall submit the liner test results sealed by an Arizona-registered professional engineer to the Department for issuance of the Discharge Authorization.

H. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall:
1. Not allow irrigation of an evapotranspiration bed; and
2. Protect the bed from vehicle loads and other damaging activities.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E308. 4.08 General Permit: Wisconsin Mound, Less Than 3000 Gallons Per Day Design Flow

A. A 4.08 General Permit allows for the use of a Wisconsin mound with a design flow of less than 3000 gallons per day receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "Wisconsin mound" means a disposal technology characterized by:
   a. An above-grade bed system that blends with the land surface into which is dispensed pressure dosed wastewater from a septic tank or other upstream treatment device,
   b. Dispersal of wastewater under unsaturated flow conditions through the engineered media system contained in the mound, and
   c. Wastewater treated by passage through the mound before percolation into the native soil below the mound.
2. An applicant may use a Wisconsin mound if:
   a. The native soil has excessively high or low permeability,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. A reduction in minimum vertical separation is desired.

B. Performance. An applicant shall design a Wisconsin mound so that treated wastewater released to the native soil meets the following criteria:
1. Performance Category A.
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1000 (Log_{10} 3.0) colony forming units per 100 milliliters, 95th percentile; or
2. Performance Category B.
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the internal wastewater distribution system media proposed for use in the Wisconsin mound;
2. Two scaled or dimensioned cross sections of the mound (one of the shortest basal area footprint dimension and one of the lengthwise dimension); and
3. Design calculations following the "Wisconsin Mound Soil Absorption System: Siting, Design, and Construction Manual," published by the University of Wisconsin – Madison, January 1990 Edition (the Wisconsin Mound Manual). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the University of Wisconsin – Madison, SSWMP, 1525 Observatory Drive, Room 345, Madison, WI 53706.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Pressure dosed wastewater is delivered into the Wisconsin mound through a pressurized line and secondary distribution lines into an engineered aggregate infiltration bed, or equivalent system, in conformance with R18-9-E304 and the Wisconsin Mound Manual. The applicant shall ensure that the aggregate is washed;
2. Wastewater is applied to the inlet surface of the mound media at not more than 1.0 gallon per day per square foot of mound bed inlet surface if the mound bed media conforms with the "Standard Specification for Concrete Aggregates, C33-03 (2003)," published by the American Society for Testing and Materials and the Wisconsin Mound Manual, except if cinder sand is used that is the appropriate grade with not more than 5 percent passing a #200 screen. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. The applicant shall:
   a. For cinder sand, ensure that the rate is not more than 0.8 gallons per day per square foot of mound bed inlet surface; and
   b. Wash the media used for the mound bed;
3. The aggregate infiltration bed and mound bed is capped by coarser textured soil, such as sand, sandy loam, or silt loam. An applicant shall not use silty clay, clay loam, or clays;
4. The cap material is covered by topsoil, following the procedure in the Wisconsin Mound Manual, and the topsoil is capable of supporting vegetation, is not clay, and is graded to drain;
5. The top and bottom surfaces of the aggregate infiltration bed are level and do not exceed 10 feet in width and that:
   a. The minimum depth of the aggregate infiltration bed is 9 inches, or
   b. Synthetic filter fabric permeable to water and air and capable of supporting the cap and topsoil load is placed on the top surface of the aggregate infiltration bed;
6. The minimum depth of mound bed media is:
   a. Performance Category A, 24 inches; or
   b. Performance Category B, 12 inches;

7. The maximum allowable side slope of the mound bed, cap material, and topsoil is not more than one vertical to three horizontal;
8. Ports for inspection and monitoring are provided to verify performance, including verification of unsaturated flow within the aggregate infiltration bed. The applicant shall:
   a. Install a vertical PVC pipe and cap with a minimum diameter of 4 inches as an inspection port at the end of the disposal line, and
   b. Install the pipe with a physical restraint to maintain pipe position;
9. The main pressurized line and secondary distribution lines for the aggregate infiltration bed are equipped at appropriate locations with cleanouts to grade;
10. The following requirements and the setbacks specified in R18-9-A312(C) are observed:
    a. Increase setbacks for the following downslope features at least 30 feet from the toe of the mound system:
       i. Property line,
       ii. Driveway,
       iii. Building,
       iv. Ditch or interceptor drain, or
       v. Any other feature that impedes water movement away from the mound; and
    b. Ensure that no upslope natural feature or improvement channels surface water or groundwater to the mound area;
11. The portion of the basal area of native soil below the mound conforms to the Wisconsin Mound Manual. The applicant shall:
    a. Calculate the absorption of wastewater into the native soil for only the effective basal area;
    b. Apply the soil absorption rate specified in R18-9-A312(D). The applicant may increase allowable loading rate to the mound bed inlet surface up to 1.6 times if the wastewater dispersed to the mound is pretreated to reduce the sum of TSS and BOD_5 to 60 mg/l or less. The applicant may increase the soil absorption rate to not more than 0.20 gallons per day per square foot of basal area if the following slowly permeable soils underlie the mound:
       i. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure; or
       ii. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure;
12. The slope of the native soil at the basal area does not exceed 25 percent, and a slope stability analysis is performed whenever the basal area or site slope within 50 horizontal feet from the mound system footprint exceeds 15 percent.

E. Installation. An applicant shall:
1. Prepare native soil for construction of a Wisconsin mound system. The applicant shall:
   a. Mow vegetation and cut down trees in the vicinity of the basal area site to within 2 inches of the surface;
   b. Leave in place boulders and tree stumps and other herbaceous material that would excessively alter the soil structure if removed after mowing and cutting;
   c. Plow native soil serving as the basal area footprint along the contours to 7- to 8- inch depth;
   d. Not substitute rototilling for plowing; and
   e. Begin mound construction immediately after plowing;
2. Place each layer of the bed system to prevent differential settling and promote uniform density; and
3. Use the Wisconsin Mound Manual to guide any other detail of installation. The applicant may vary installation procedures and criteria depending on mound design but shall use installation procedures and criteria that are at least equivalent to those in the Wisconsin Mound Manual.

F. Operation and maintenance requirements. In addition to the applicable requirements specified in R18-9-A313(B), the permittee shall:
1. If an existing mound system shows evidence of overload or hydraulic failure, conduct the following sequence of evaluations:
   a. Verify the actual loading and performance of the pretreatment system.
   b. Verify the watertightness of the pretreatment and dosing tanks;
   c. Determine the dosing rates and dosing intervals to the aggregate infiltration bed and compare it with the original design to evaluate the presence or absence of saturated conditions in the aggregate infiltration bed;
   d. If the above steps in subsections (F)(1)(a) through (c) do not indicate an anomalous condition, evaluate the site and recalculation of the disposal capability to determine if mound lengthening is feasible;
   e. Determine if site modifications are possible including changing surface drainage patterns at upgrade locations and lowering the groundwater level by installing interceptor drains to reduce native soil saturation at shallow levels; and
   f. Determine if the basal area can be increased, consistent with R18-9-A309(A)(9)(b)(iv);
2. Prepare servicing and waste disposal procedures and task schedules necessary for clearing the main pressurized wastewater line and secondary distribution lines, septic tank effluent filter, pump intake, and controls.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E309. 4.09 General Permit: Engineered Pad System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.09 General Permit allows for the use of an engineered pad system receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, an "engineered pad system" means a treatment and disposal technology characterized by:
   a. The delivery of pretreated wastewater by gravity or pressure distribution to the engineered pad and sand bed assembly, followed by dispersal of the wastewater into the native soil; and
   b. Wastewater movement through the engineered pad and sand bed assembly by gravity under unsaturated flow conditions to provide additional passive biological treatment.
2. The applicant may use an engineered pad system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or

c. The available area is limited for installing a disposal works authorized by R18-9-E302.

B. Performance. An applicant shall ensure that:
1. The engineered pad system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 50 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 50 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile; or
2. The engineered pad system is designed to meet any other performance, loading rate, and configuration criteria specified in the reviewed product list maintained by the Department as required under R18-9-A309(E).

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit design materials and construction specifications for the engineered pad system.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Gravity and pressurized wastewater delivery is from a septic tank or intermediate watertight chamber equipped with a pump and controls. The applicant shall ensure that:
   a. Delivered wastewater is distributed onto the top of the engineered pad system and achieves even distribution by good engineering practice, and
   b. The dosing rate for pressurized wastewater delivery is at least four doses per day and no more than 24 doses per day;
2. The sand bed consists of mineral sand washed to conform to the "Standard Specification for Concrete Aggregates, C33-03 (2003)," which is incorporated by reference in R18-9-E308(D)(2), unless the performance testing and design specifications of the engineered pad manufacturer justify a substitute specification. The applicant shall ensure that:
   a. The sand bed design provides for the placement of at least 6 inches of sand bed material below and along the perimeter of each pad, and
   b. The contact surface between the bottom of the sand bed and the native soil is level;
3. The spacing between adjacent two-pad-wide rows is at least two times the distance between the bottom of the distribution pipe and the bottom of the sand bed or 5 feet, whichever is greater;
4. The wastewater distribution system installed on the top of the engineered pad system is covered with a breathable geotextile material and the breathable geotextile material is covered with at least 10 inches of backfill.
   a. The applicant shall ensure that rocks and cobbles are removed from backfill cover and grade the backfill for drainage.
   b. The applicant may place the engineered pad system above grade, partially bury it, or fully bury it depending on site and service circumstances;
5. The engineered pad system is constructed with durable materials and capable of withstanding stress from installation and operational service; and
6. At least two inspection ports are installed in the engineered pad system to confirm unsaturated wastewater treatment conditions at diagnostic locations.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place sand media to obtain a uniform density of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), an applicant shall inspect the backfill cover for physical damage or erosion and promptly repair the cover, if necessary.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended to correct a manifest typographical error in subsection (B)(2) (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E310. 4.10 General Permit: Intermittent Sand Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.10 General Permit allows for the use of an intermittent sand filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, an "intermittent sand filter" means a treatment technology characterized by:
   a. The pressurized delivery of pretreated wastewater to an engineered sand bed in a containment vessel equipped with an underdrain system or designed as a bottomless filter;
   b. Delivered wastewater dispersed throughout the sand media by periodic doses from the delivery pump to maintain unsaturated flow conditions in the bed; and
   c. Wastewater that is treated during passage through the media, collected by a bed underdrain chamber, and removed by pump or gravity to the disposal works, or wastewater that percolates downward directly into the native soil as part of a bottomless filter design.
2. An applicant may use an intermittent sand filter if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. The applicant desires a reduction in setback distances or minimum vertical separation.

B. Performance. An applicant shall ensure that:
1. An intermittent sand filter with underdrain system is designed so that it produces treated wastewater that meets the following criteria:
   a. TSS of 10 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 10 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 40 milligrams per liter, 5-month arithmetic mean; and
   d. Total coliform level or 1000 (Log_{10} 3) colony forming units per 100 milliliters, 95th percentile; or
2. An intermittent sand filter with a bottomless filter is designed so that it produces treated wastewater released to the native soil that meets the following criteria:
   a. TSS of 20 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;

c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
d. Total coliform level of 100,000 (Log_{10} 5 colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the media proposed for use in the intermittent sand filter.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. Pressurized wastewater delivery is from the septic tank or separate watertight chamber with a pump sized and controlled to deliver the pretreated wastewater to the top of the intermittent sand filter. The applicant shall ensure that the dosing rate is at least 4 doses per day and not more than 24 doses per day;
2. The pressurized wastewater delivery system provides even distribution in the sand filter through good engineering practice. The applicant shall:
   a. Specify all necessary controls, pipes, valves, orifices, filter cover materials, gravel, or other distribution media, and monitoring and servicing components in the design documents; and
   b. Ensure that the cover and topsoil is 6 to 12 inches in depth and graded to drain;
3. The sand filter containment vessel is watertight, structurally sound, durable, and capable of withstanding stress from installation and operational service. The applicant may place the intermittent sand filter above grade, partially buried, or fully buried depending on site and service circumstances;
4. Media used in the intermittent sand filter is mineral sand and that the media is washed and conforms to "Standard Specification for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2);
5. The sand media depth is a minimum of 24 inches with the top and bottom surfaces level and the maximum wastewater loading rate is 1.0 gallons per day per square foot of inlet surface at the rated daily design flow;
6. The underdrain system:
   a. Is within the containment vessel;
   b. Supports the filter media and all overlying loads from the unsupported construction above the top surface of the sand media;
   c. Has sufficient void volume above the normal high level of the intermittent sand filter effluent to prevent saturation of the bottom of the sand media by a 24-hour power outage or pump malfunction; and
   d. Includes necessary monitoring, inspection, and servicing features;
7. Inspection ports are installed in the distribution media and in the underdrain;
8. The bottomless filter is designed similar to the underdrain system, except that the sand media is positioned on top of the native soil absorption surface. The applicant shall ensure that companion modifications are made that eliminate the containment vessel bottom and underdrain and relocate the underdrain inspection port to ensure reliable indication of the presence or absence of water saturation in the sand media;
9. The native soil absorption system is designed to ensure that the linear loading rate does not exceed site disposal capability; and
10. The bottomless sand filter discharge rate per unit area to the native soil does not exceed the adjusted soil absorption rate for the quality of wastewater specified in subsection (B)(2).

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall place the containment vessel, underdrain system, filter media, and pressurized wastewater distribution system in an excavation with adequate foundation and each layer installed to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter within the sand media.

F. Operation and maintenance requirements. The applicant shall follow the applicable requirements in R18-9-A313(B).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E311. 4.11 General Permit: Peat Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.11 General Permit allows for the use of a peat filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "peat filter" means a disposal technology characterized by:
   a. The dosed delivery of treated wastewater to the peat bed, which can be a manufactured module or a disposal bed excavated in native soil and filled with compacted peat;
   b. Wastewater passing through the peat that is further treated by removal of positively charged molecules, filtering, and biological activity before entry into native soil; and
   c. If the peat filter system is constructed as a disposal bed filled with compacted peat, wastewater that is absorbed into native soil at the bottom and sides of the bed.
2. An applicant may configure a modular system if a portion of the wastewater that has passed through the peat filter is recirculated back to the pump chamber.
3. An applicant may use a peat filter system if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock,
   c. A reduction in setback distances or minimum vertical separation is desired, or
   d. Cold weather inhibits performance of other treatment or disposal technologies.

B. Performance. An applicant shall ensure that a peat filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, 5-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. Specifications for the peat media proposed for use in the peat filter or provided in the peat module, including:
   a. Porosity;

b. Degree of humification;
c. pH;
d. Particle size distribution;
e. Moisture content;
f. A statement of whether the peat is air dried, and whether the peat is from sphagnum moss or bog cotton; and
g. A description of the degree of decomposition;
2. Specifications for installing the peat media; and
3. If a peat module is used:
a. The name and address of the manufacturer,
b. The model number, and
c. A copy of the manufacturer's warranty.

D. Design requirements.
1. If a pump tank is used to dose the peat module or bed, an applicant shall:
a. Ensure that the pump tank is sized to contain the dose volume and a reserve volume above the high water alarm that will contain the volume of daily design flow; and
b. Use a control panel with a programmable timer to dose at the applicable loading rate.
2. Peat module system. In addition to the applicable requirements in R18-9-A312, the applicant shall:
a. Size the gravel bed supporting the peat filter modules to allow it to act as a disposal works and ensure that the bed is level, long, and narrow, and installed on contour to optimize lateral movement away from the disposal area;
b. For modules designed to allow wastewater flow through the peat filter and base material into underlying native soil, size the base on which the modules rest to accommodate the soil absorption rate of the native soil;
c. Place fill over the module so that it conforms to the manufacturer's specification. If the fill is planted, the applicant shall use only grass or shallow rooted plants; and
d. Ensure that the peat media depth is at least 24 inches, the peat is installed with the top and bottom surfaces level, and the maximum wastewater loading rate is 5.5 gallons per day per square foot of inlet surface at the rated daily design flow, unless the Department approves a different wastewater loading rate under R18-9-A309(E).
3. Peat filter bed system. In addition to the applicable requirements in R18-9-A312, the applicant shall ensure that:
a. The bed is filled with peat derived from sphagnum moss and compacted according to the installation specification;
b. The maximum wastewater loading rate is 1 gallon per day per square foot of inlet surface at the rated daily design flow;
c. At least 24 inches of installed peat underlies the distribution piping and 10 to 14 inches of installed peat overlies the piping;
d. The cover material over the peat filter bed is slightly mounded to promote runoff of rainfall. The applicant shall not place additional fill over the peat; and
e. The peat is air dried, with a porosity greater than 90 percent, and a particle size distribution of 92 to 100 percent passing a No. 4 sieve and less than 8 percent passing a No. 30 sieve.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), the applicant shall:
1. Peat module system.
a. Compact the bottom of all excavations for the filter modules, pump, aerator, and other components to provide adequate foundation, slope the bottom toward the discharge to minimize ponding, and ensure that the bottom is flat, and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
b. Place the peat filter modules on a level, 6-inch deep gravel bed;
c. Place backfill around the modules and grade the backfill to divert surface water away from the modules;
d. Not place objects on or move objects over the system area that might damage the module containers or restrict airflow to the modules;
e. Cover gaps between modules to prevent damage to the system;
f. Fit each system with at least one sampling port that allows collection of wastewater at the exit from the final treatment module;
g. Provide the modules and other components with anti-buoyancy devices to ensure stability in the event of flooding or high water table conditions; and
h. Provide a mechanism for draining the filter module inlet line; or
2. Peat filter bed system.
a. Scarify the bottom and sides of the leaching bed excavation to remove any smeared surfaces, and:
i. Unless directed by an installation specification consistent with this Chapter, place peat media in the excavation in 6-inch lifts; and
ii. Compact each lift before the next lift is added. The applicant shall take care to avoid compaction of the underlying native soil;
b. Lay distribution pipe in trenches cut in the compacted peat, and
i. Ensure that at least 3 inches of aggregate underlie the pipe to reduce clogging of holes or scouring of the peat surrounding the pipe, and
ii. Place peat on top of and around the sides of the pipes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect the finished grade over the peat filter for proper drainage, protection from damaging loads, and root invasion of the wastewater distribution system and perform maintenance as needed.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E312. 4.12 General Permit: Textile Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.12 General Permit allows for the use of a textile filter receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "textile filter" means a disposal technology characterized by:

a. The flow of wastewater into a packed bed filter in a containment structure or structures. The packed bed filter uses a textile filter medium with high porosity and surface area; and
b. The textile filter medium provides further treatment by removing suspended material from the wastewater by physical straining, and reducing nutrients by microbial action.

2. An applicant may use a textile filter in conjunction with a two-compartment septic tank or a two-tank system if the second compartment or tank is used as a recirculation and blending tank. The applicant shall divert a portion of the wastewater flow from the textile filter back into the second tank for further treatment.
3. An applicant may use a textile filter if:
   a. Nitrogen reduction is desired,
   b. The native soil is excessively permeable,
   c. There is little native soil overlying fractured or excessively permeable rock, or
   d. A reduction in setback distances or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a textile filter is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 15 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 15 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean, or 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(4); and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. The name and address of the filter manufacturer;
2. The filter model number;
3. A copy of the manufacturer's filter warranty;
4. If the system is for nitrogen reduction to 15 milligrams per liter, five-month arithmetic mean, specifications on the nitrogen reduction performance of the filter system and corroborating third-party test data;
5. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life; and
6. If a pump or aerator is required for proper operation, the pump or aerator model number and a copy of the manufacturer's warranty.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The textile medium has a porosity of greater than 80 percent;
2. The wastewater is delivered to the textile filter by gravity flow or a pump;
3. If a pump is used to dose the textile filter, the pump and appurtenances meet following criteria:
   a. The textile media loading rate and wastewater recirculation rate are based on calculations that conform with performance data listed in the reviewed product list maintained by the Department as required under R18-9-A309(E),
   b. The tank and recirculation components are sized to contain the dose volume and a reserve volume above the high water level alarm that will contain the volume of daily design flow, and
   c. A control panel with a programmable timer is used to dose the textile media at the applicable loading rate and wastewater recirculation rate.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall:
1. Before placing the filter modules, slope the bottom of the excavation for the modules toward the discharge point to minimize ponding;
2. Ensure that the bottom of all excavations for the filter modules, pump, aerator, or other components is level and free of debris, rocks, and sharp objects. If the excavation is uneven or rocky, the applicant shall use a bed of sand or pea gravel to create an even, smooth surface;
3. Provide the modules and other components with anti-buoyancy devices to ensure they remain in place in the event of high water table conditions; and
4. Provide a mechanism for draining the filter module inlet line.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313, the permittee shall not flush corrosives or other materials known to damage the textile material into any drain that transmits wastewater to the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E313. 4.13 General Permit: Denitrifying System Using Separated Wastewater Streams, Less Than 3000 Gallons Per Day Design Flow

A. A 4.13 General Permit allows for the use of a separated wastewater streams, denitrifying system for a dwelling.
1. Definition. For purposes of this Section a "denitrifying system using wastewater streams" means a gravity flow treatment and disposal system for a dwelling that requires separate plumbing drains for conducting dishwasher, kitchen sink, and toilet flush water to wastewater treatment tank "A" and all other wastewater to a wastewater treatment tank "B."
   a. Treated wastewater from tanks "A" and "B" is delivered to an engineered composite disposal bed system that includes an upper distribution pipe to deliver treated wastewater from tank "A" to a columnar celled, sand-filled bed.
   b. The wastewater drains downward into a sand bed, then into a pea gravel bed with an internal distribution pipe system that delivers the treated wastewater from tank "B."
   c. The entire composite bed is constructed within an excavation about 6 feet deep.
   d. The system operates under gravity flow from tanks "A" and "B."
   e. An engineered sampling assembly is installed at the midpoint of the disposal line run and at the base of the composite bed during construction to monitor system performance.
2. An applicant may use a separated wastewater streams, denitrifying system where total nitrogen reduction is required under this Article before release to the native soil.

B. Performance. An applicant shall ensure that a separated wastewater streams, denitrifying system is designed so that the

treated wastewater released to the native soil meets the following criteria:
1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 30 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The applicant shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.
1. An applicant may use a separated wastewater streams, denitrifying system achieving the performance requirements specified in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed system with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E314. 4.14 General Permit: Sewage Vault, Less Than 3000 Gallons Per Day Design Flow

A. A 4.14 General Permit allows for the use of a sewage vault that receives sewage.
1. An applicant may use a sewage vault if a severe site or operational constraint prevents installation of a conventional septic tank and disposal works or any other on-site wastewater treatment facility allowed under this Article.
2. An applicant may install a sewage vault as a temporary measure if connection to a sewer or installation of another on-site wastewater treatment facility occurs within two years of the connection or installation.

B. Performance. An applicant shall:
1. Not allow a discharge from a sewage vault to the native soil or land surface, and
2. Pump and dispose of vault contents at a sewage treatment facility or other sewage disposal mechanism allowed by law.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B).

D. Design requirements. In addition to the requirements in R18-9-A312, an applicant shall:
1. Install a sewage vault with a capacity that is at least 10 times the daily design flow determined by R18-9-A314(4)(a)(i),
2. Use design elements to prevent the buoyancy of the vault if installed in an area where a high groundwater table may impinge on the vault,
3. Test the sewage vault for leakage using the procedure under R18-9-A314(5)(d). The tank passes the water test if the water level does not drop over a 24-hour period,
4. Install an alarm or signal on the vault to indicate when 85 percent of the vault capacity is reached, and
5. Contract with a person who licensed a vehicle under 18 A.A.C. 13, Article 11 to pump out the vault on a schedule specified within the contract to ensure that the vault is pumped before full.

E. Installation, operation, and maintenance requirements. The applicant shall comply with the applicable installation, operation, and maintenance requirements in R18-9-A313(A) and (B).

F. Reference design.
1. An applicant may use a sewage vault that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed storage vault with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E315. 4.15 General Permit: Aerobic System Less Than 3000 Gallons Per Day Design Flow

A. A 4.15 General Permit allows for the construction and use of an aerobic system that uses aeration for treatment.
1. Definition. For purposes of this Section, an "aerobic system" means a treatment unit consisting of components that:
   a. Mechanically introduce oxygen to wastewater,
   b. Typically provide clarification of the wastewater after aeration, and
   c. Convey the treated wastewater by pressure or gravity distribution to the disposal works.
2. An applicant may use an aerobic system if:
   a. Enhanced biological processing is needed to treat wastewater with high organic content,
   b. A soil or site condition is not adequate for installation of a standard septic tank and disposal works under R18-9-E302,
   c. A highly treated wastewater amenable to disinfection is needed, or
   d. Nitrogen removal from the wastewater is needed and removal performance of the system is documented according to subsection (C)(6).

B. Performance.
1. An applicant shall ensure that the aerobic system is designed so that the treated wastewater released to the native soil meets the following criteria:
   a. TSS of 30 milligrams per liter, 30-day arithmetic mean;
   b. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
   c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five-month arithmetic mean per liter if documented under subsection (C)(6); and
   d. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile.
2. An applicant may use an aerobic system that meets the following less stringent performance criteria if the aerobic technology is listed by the Department under R18-9-A309(E) and the Department bases its review and listing

on the technology being less costly and simpler to operate when compared to other aerobic technologies:

a. TSS of 60 milligrams per liter, 30-day arithmetic mean;
b. BOD_5 of 60 milligrams per liter, 30-day arithmetic mean;
c. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean, or as low as 15 milligrams, five month arithmetic mean per liter, if documented under subsection (C)(6); and
d. Total coliform level of 1,000,000 (Log_{10} 7) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. The name and address of the aerobic system manufacturer;
2. The model number of the aerobic system;
3. Evidence of performance specified in subsection (B)(1) or (B)(2), as applicable;
4. A list of pretreatment components needed to meet performance requirements;
5. A copy of the manufacturer's warranty and operation and maintenance recommendations to achieve performance over a 20-year operational life; and
6. If the aerobic system will be used for nitrogen removal from the wastewater, either:
   a. Evidence of a valid product listing under R18-9-E309(E) indicating nitrogen removal performance, or
   b. Specifications and third party test data corroborating nitrogen reduction to the intended level.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. The wastewater is delivered to the aerobic treatment unit by gravity flow either directly or by a lift pump;
2. An interceptor or other pretreatment device is incorporated if necessary to meet the performance criteria specified in subsection (B)(1) or (2), or if recommended by the manufacturer for pretreatment if a garbage disposal appliance is used;
3. A clarifier is provided after aeration for any treatment technology that achieves performance that is equal to or better than the performance criteria specified in subsection (B)(1); and
4. Ports for inspection and monitoring are provided to verify performance.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:

1. The installation of the aerobic treatment components conforms to manufacturer's specifications that do not conflict with Articles 1 and 3 of this Chapter and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c); and
2. Excavation and foundation work, and backfill placement is performed to prevent differential settling and adverse drainage conditions.

F. Operation and maintenance requirements. The permittee shall:

1. Follow the applicable requirements in R18-9-A313(B), and
2. Ensure that filters are cleaned and replaced as necessary.

G. Reference design.

1. An applicant may use an aerobic system that achieves the applicable performance requirements by following a reference design on file with the Department.
2. An applicant using a reference design shall submit, with the Notice of Intent to Discharge, supplemental information specific to the proposed installation on a form approved by the Department.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E316. 4.16 General Permit: Nitrate-Reactive Media Filter, Less Than 3000 Gallons Per Day Design Flow

A. A 4.16 General Permit allows for the construction and use of a nitrate-reactive media filter receiving pretreated wastewater.

1. Definition. "Nitrate-reactive media filter" means a treatment technology characterized by:
   a. The application of pretreated, nitrified wastewater to a packed bed filter in a containment structure. A packed bed filter consists of nitrate-reactive media that receives pretreated wastewater under appropriate design and operational conditions, and
   b. The ability of the nitrate-reactive filter to further treat the nitrified wastewater by removing total nitrogen by chemical and physical processes.
2. An applicant shall use a nitrate-reactive media filter with a treatment or disposal works to pretreat and dispose of the wastewater.
3. An applicant may use a nitrate-reactive media filter if nitrogen reduction is required under this Article.

B. Restrictions. The applicant shall not use any product to supply pretreated wastewater to the nitrate-reactive media filter unless:

1. The product meets the pretreatment requirements for the filter based on product performance information in the product listing, and
2. The product is listed by the Department as a reviewed product under R18-9-A309(E).

C. Performance. An applicant shall ensure that a nitrate-reactive media filter is designed so that it produces treated wastewater that does not exceed the following criteria:

1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 10 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 1,000,000 (Log_{10} 6) colony forming units per 100 milliliters, 95th percentile.

D. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:

1. The name and address of the filter manufacturer;
2. The filter model number;
3. The manufacturer's requirements for pretreated wastewater supplied to the nitrate-reactive media filter;
4. The manufacturer's specifications for design, installation, and operation for the nitrate-reactive media filter system and appurtenances;
5. The manufacturer's warranty for the nitrate-reactive media filter system and appurtenances;
6. The manufacturer's operation and maintenance recommendations to achieve a 20-year operational life for the

nitrate-reactive media filter system and appurtenances; and

7. The manufacturer name and model number for all appurtenances that significantly contribute to achieving the performance required in subsection (C).

E. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:

1. The nitrate-reactive media filter and appurtenances conform with manufacturer's specifications,
2. The loading rate of pretreated wastewater to the nitrate-reactive media inlet surface meets the manufacturer's specification and does not exceed 5.00 gallons per day per square foot of media inlet surface area, and
3. The bed packed with nitrate reactive media is at least 24 inches thick.

F. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that:

1. The nitrate-reactive media filter and appurtenances are installed according to manufacturer's specifications to achieve proper wastewater treatment, hydraulic performance, and operational life; and
2. Anti-buoyancy devices are installed when high water table or extreme soil saturation conditions are likely during operational life of the facility.

G. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and the manufacturer's specifications for the nitrite-reactive media filter, the permittee shall not dispose of corrosives or other materials that are known to damage the nitrate-reactive media filter system into the on-site wastewater treatment facility.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E317. 4.17 General Permit: Cap System, Less Than 3000 Gallons Per Day Design Flow

A. A 4.17 General Permit allows for the use of a cap fill cover over a conventional trench disposal works receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).

1. Definition. For purposes of this Section, a "cap system" means a disposal technology characterized by:
   a. A soil cap, consisting of engineered fill placed over a trench that is not as deep as a trench allowed by R18-9-E302; and
   b. A design that compensates for reduced trench depth by maintaining and enhancing the infiltration of wastewater into native soil through the trench sidewalls.
2. An applicant may use a cap system if:
   a. There is little native soil overlying fractured or excessively permeable rock, or
   b. A high water table does not allow the minimum vertical separation to be met by a system authorized by R18-9-E302.

B. Performance. An applicant shall ensure that the design soil absorption rate and vertical separation complies with this Chapter for a trench, based on the following performance, unless additional pretreatment is provided:

1. TSS of 75 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 150 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000,000 (Log_{10} 8) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed cap fill material.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:

1. The soil texture from the natural grade to the depth of the layer or the water table that limits the soil for unsaturated wastewater flow is no finer than silty clay loam;
2. Cap fill material used is free of debris, stones, frozen clods, or ice, and is the same as or one soil group finer than that of the disposal site material, except that the applicant shall not use fill material finer than clay loam as an additive;
3. Trench construction.
   a. The trench bottom is at least 12 inches below the bottom of the disposal pipe and not more than 24 inches below the natural grade, and the trench bottom and disposal pipe are level;
   b. The aggregate cover over the disposal pipe is 2 inches thick and the top of the aggregate cover is level and not more than 9 inches above the natural grade;
   c. The cap fill cover above the top of the aggregate cover is at least 9 inches but not more than 18 inches thick. The applicant shall ensure that:
      i. The cap surface is protected to prevent erosion and sloped to route surface drainage around the ends of the trench; and
      ii. If the top of the aggregate is at or below the original ground surface, the cap surface has side slopes not more than one vertical to three horizontal; or
      iii. If the top of the aggregate is above the original ground surface, the horizontal extent of the finished fill edges is at least 10 feet beyond the nearest trench sidewall or endwall;
   d. The criteria for trench length, bottom width and spacing, and disposal pipe size is the same as that for the trench system prescribed in R18-9-E302;
   e. Permeable geotextile fabric is placed on the aggregate top, trench end, and sidewalls extending above natural grade;
   f. The native soil within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed a 12 percent slope if the top of the aggregate cover extends above the natural grade at any location along the trench length. The applicant shall ensure that the slope within the disposal site and the adjacent downgradient area to a 50-foot horizontal distance does not exceed 20 percent if the top of the aggregate cover does not extend above the natural grade;
   g. The fill material is compacted to a density of 90 percent of the native soil if the invert elevation of the disposal pipe is at or above the natural grade at any location along the trench length;

h. At least one observation port is installed to the bottom of each cap fill trench;
i. The effective absorption area for each trench is the sum of the trench bottom area and the sidewall area. The height of the sidewall used for calculating the sidewall area is the vertical distance between the trench bottom and the lowest point of the natural land surface along the trench length; and
j. If the applicant uses correction factors for soil absorption rate under R18-9-A312(D)(3) and minimum vertical separation under R18-9-A312(E), additional wastewater pretreatment is provided.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall prepare the disposal site when high soil moisture is not present and equipment operations do not create platy soil conditions. The applicant shall:
1. Plow or scarify the fill area to disrupt the vegetative mat while avoiding smearing,
2. Construct trenches as specified in subsection (D)(3),
3. Scarify the site and apply part of the cap fill to the fill area and blend the fill with the scarified native soil within the contact layers, and
4. Follow the construction design specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall inspect and repair the cap fill and other surface features as needed to ensure proper disposal function, proper drainage of surface water, and prevention of damaging loads on the cap.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E318. 4.18 General Permit: Constructed Wetland, Less Than 3000 Gallons Per Day Design Flow

A. A 4.18 General Permit allows for the use of a constructed wetland receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. "Constructed wetland" means a treatment technology characterized by a lined excavation, filled with a medium for growing plants and planted with marsh vegetation. The treated wastewater flows horizontally through the medium in contact with the aquatic plants.
   a. As the wastewater flows through the wetland system, additional treatment is provided by filtering, settling, volatilization, and evapotranspiration.
   b. The wetland system allows microorganisms to break down organic material and plants to take up nutrients and other pollutants.
   c. The wastewater treated by a wetland system is discharged to a subsurface soil disposal system.
2. An applicant may use a constructed wetland if further wastewater treatment is needed before disposal.

B. Performance. An applicant shall ensure that a constructed wetland is designed so that it produces treated wastewater that meets the following criteria:
1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 45 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. The applicant shall comply with the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B).

D. Design, installation, operation, and maintenance requirements. The permittee shall comply with the applicable design, installation, operation, and maintenance requirements in R18-9-A312, R18-9-A313(A), and R18-9-A313(B).

E. Reference design.
1. An applicant may use a constructed wetland that achieves the performance requirements in subsection (B) by following a reference design on file with the Department.
2. The applicant shall file a form provided by the Department for supplemental information about the proposed constructed wetland with the applicant's submittal of the Notice of Intent to Discharge.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E319. 4.19 General Permit: Sand-Lined Trench, Less Than 3000 Gallons Per Day Design Flow

A. A 4.19 General Permit allows for the use of a sand-lined trench receiving wastewater treated to a level equal to or better than that specified in R18-9-E302(B).
1. Definition. For purposes of this Section, a "sand-lined trench" means a disposal technology characterized by:
   a. Engineered placement of sand or equivalently graded glass in trenches excavated in native soil,
   b. Wastewater dispersed throughout the media by pressure distribution technology as specified in R18-9-E304 using a timer-controlled pump in periodic uniform doses that maintain unsaturated flow conditions, and
   c. Wastewater treated during travel through the media and absorbed into the native soil at the bottom of the trench.
2. An applicant may use a sand-lined trench if:
   a. The native soil is excessively permeable,
   b. There is little native soil overlying fractured or excessively permeable rock, or
   c. Reduction in setback distances, or minimum vertical separation is desired.

B. Performance. An applicant shall ensure that a sand-lined trench is designed so that treated wastewater released to the native soil meets the following criteria:
1. TSS of 20 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
4. Total coliform level of 100,000 (Log_{10} 5) colony forming units per 100 milliliters, 95th percentile.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit specifications for the proposed media in the trench.

D. Design requirements. In addition to the applicable requirements in R18-9-A312, an applicant shall ensure that:
1. The media used in the trench is mineral sand, crushed glass, or cinder sand and that:

a. The media conforms to "Standard Specifications for Concrete Aggregates, C33-03," which is incorporated by reference in R18-9-E308(D)(2), "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C117-04 (2004)," published by the American Society for Testing and Materials, or an equivalent method approved by the Department. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959; and
b. Sieve analysis complies with the "Standard Test Method for Materials Finer than 75-µm (No. 200) Sieve in Mineral Aggregates by Washing, C11704," which is incorporated by reference in subsection (D)(1)(a), or an equivalent method approved by the Department;

2. Trenches.
a. Distribution pipes are capped on the end;
b. The spacing between trenches is at least two times the distance between the bottom of the distribution pipe and the bottom of the trench or 5 feet, whichever is greater;
c. The inlet filter media surface, wastewater distribution pipe, and bottom of the trench are level and the maximum effluent loading rate is not more than 1.0 gallon per day per square foot of sand media inlet surface;
d. The depth of sand below the gravel layer containing the distribution system is at least 24 inches;
e. The gravel layer containing the distribution system is 5 to 12 inches thick, at least 36 inches wide, and level;
f. Permeable geotextile fabric is placed at the base of and along the sides of the gravel layer, as necessary. The applicant shall ensure that:
i. Geotextile fabric is placed on top of the gravel layer, and
ii. Any cover soil placed on top of the geotextile fabric is capable of maintaining vegetative growth while allowing passage of air;
g. At least one observation port is installed to the bottom of each sand lined trench;
h. If the trench is installed in excessively permeable soil or rock, at least 1 foot of loamy sand is placed in the trench below the filter media. The minimum vertical separation distance is measured from the bottom of the loamy sand; and
i. The trench design is based on the design flow, native soil absorption area at the trench bottom, minimum vertical separation below the trench bottom, design effluent infiltration rate at the top of the sand fill, and the adjusted soil absorption rate for the final effluent quality; and

3. The dosing system consists of a timer-controlled pump, electrical components, and distribution network and that:
a. Orifice spacing on the distribution piping does not exceed 4 square feet of media infiltrative surface area per orifice, and
b. The dosing rate is at least four doses per day and not more than 24 doses per day.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A), an applicant shall ensure that the filter media is placed in the trench to prevent differential settling and promote a uniform density throughout of 1.3 to 1.4 grams per cubic centimeter.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B), the permittee shall ensure that:
1. The septic tank filter and pump tank are inspected and cleaned;
2. The dosing tank pump screen, pump switches, and floats are cleaned yearly and any residue is disposed of lawfully; and
3. Lateral lines are flushed and the liquid waste discharged into the treatment system headworks.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E320. 4.20 General Permit: Disinfection Devices, Less Than 3000 Gallons Per Day Design Flow

A. A 4.20 General Permit allows for the use of a disinfection device to reduce the level of harmful organisms in wastewater, provided the wastewater is pretreated to equal or better than the performance criteria in R18-9-E315(B)(1)(a). An applicant may use a disinfection device if:
1. The disinfection device kills the microorganisms by exposing the wastewater to heat, radiation, or a chemical disinfectant.
2. Some means of disinfection is required before discharge.
3. A reduction in harmful microorganisms, as represented by the total coliform level, is needed for surface or near surface disposal of the wastewater or reduction of the minimum vertical separation distance specified in R18-9-A312(E) is desired.

B. Restrictions.
1. Unless the disinfection device is designed to operate without electricity, an applicant shall not install the device if electricity is not permanently available at the site.
2. The 4.20 General Permit does not authorize a disinfection device that releases chemical disinfectants or disinfection byproducts harmful to plants or wildlife in the discharge area or causes a violation of an Aquifer Water Quality Standard.

C. Performance. An applicant shall ensure that:
1. A fail-safe wastewater control or operational process is incorporated to prevent a release of inadequately treated wastewater;
2. The performance of a disinfection device meets the level of disinfection needed for the type of disposal and produces effluent that:
a. Is nominally free of coliform bacteria;
b. Is clear and odorless, and
c. Has a dissolved oxygen content of at least 6 milligrams per liter;

D. Design requirements. An applicant shall ensure that an on-site wastewater treatment facility with a disposal works designed to discharge to the land surface includes disinfection technology that conforms with the following requirements:

1. Chlorine disinfection.
   a. Available chlorine is maintained as indicated in the following table:

pH of Wastewater (s.u.)	Required Concentration of Available Chlorine in Wastewater (mg/L)	
	Wastewater to the Disinfection Device Meets a TSS of 30 mg/L and BOD_5 of 30 mg/L	Wastewater to the Disinfection Device Meets a TSS of 20 mg/L and BOD_5 of 20 mg/L
6	15 – 30	6 – 10
7	20 – 35	10 – 20
8	30 – 45	20 – 35

   b. The minimum chlorine contact time is 15 minutes for wastewater at 70°F and 30 minutes for wastewater at 50°F, based on a flow equal to four times the daily design flow;
2. Contact chambers are watertight and made of plastic, fiberglass, or other durable material and are configured to prevent short-circuiting; and
3. For a device that disinfects by another method other than chlorine disinfection, dose and contact time are determined to reliably produce treated wastewater that is nominally free of coliform bacteria, based on a flow equal to four times the daily design flow.

E. Operation and maintenance. A permittee shall ensure that:

1. If the disinfection device relies on the addition of chemicals for disinfection, the device is operated to minimize the discharge of disinfection chemicals while achieving the required level of disinfection; and
2. The disinfection device is inspected and maintained at least once every three months by a qualified person.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E321. 4.21 General Permit: Surface Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.21 General Permit allows for surface application of treated wastewater that is nominally free of coliform bacteria produced by the treatment works of an on-site wastewater treatment facility.

B. Performance. An applicant shall ensure that the treated wastewater distributed for surface application meets the following criteria:

1. TSS of 30 milligrams per liter, 30-day arithmetic mean;
2. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
3. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean;
4. Is nominally free of total coliform bacteria as indicated by a total coliform level of Log_{10} 0 colony forming units per 100 milliliters, 95th percentile.

C. Restrictions. The applicant shall not install the disposal works if weather records indicate that:

1. Average minimum temperature in any month is 20°F or less, or
2. Over 1/3 of the average annual precipitation falls in a 30-day period.

D. Design requirements. An applicant shall ensure that:

1. The land surface application rate does not exceed the lowest application rate as determined under R18-9-A312(D) minus no greater than 50 percent of the evapotranspiration that may occur during the month with the least evapotranspiration in any soil zone within the top 5 feet of soil;
2. The design incorporates sprinklers, bubbler heads, or other dispersal components that optimize wastewater loading rates and prevent ponding on the land surface;
3. The design specifies containment berms:
   a. Compacted to a minimum of 95 percent Proctor;
   b. Designed to contain the runoff of the 10-year, 24-hour storm event in addition to the daily design flow; and
   c. Designed to remain intact in the event of a more severe rainfall event; and
4. The design incorporates placement of signage on hose bibs, human ingress points to the surface disposal area, and at intervals around the perimeter of the surface disposal area to provide notification of use of treated wastewater and a warning against ingestion.

E. Installation requirements. An applicant shall ensure that installation of the wastewater dispersal components conforms to manufacturer's specifications that do not conflict with this Article and to the design documents specified in the Construction Authorization issued under R18-9-A301(D)(1)(c).

F. Operation and maintenance. In addition to the requirements specified in R18-9-A313(B), the permittee shall operate and maintain the surface disposal works to:

1. Prevent treated wastewater from coming into contact with drinking fountains, water coolers, or eating areas;
2. Contain all treated wastewater within the bermed area; and
3. Ensure that hose bibs discharging treated wastewater are secured to prevent use by the public.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (Supp. 05-3).

R18-9-E322. 4.22 General Permit: Subsurface Drip Irrigation Disposal, Less Than 3000 Gallons Per Day Design Flow

A. A 4.22 General Permit allows for the construction and use of a subsurface drip irrigation disposal works that receives high quality wastewater from an on-site wastewater treatment facility to dispense the wastewater to an irrigation system that is buried at a shallow depth in native soil. A 4.22 General Permit includes a pressure distribution system under R18-9-E304.

1. The subsurface drip irrigation disposal works is designed to disperse the treated wastewater into the soil under unsaturated conditions by pressure distribution and timed dosing. The applicant shall ensure that the pressure distribution system meets the requirements specified in R18-9-E304, and the Department shall consider whether the requirements of R18-9-E304 are met when processing the application under R18-9-A301(B).

2. A subsurface drip irrigation disposal works reduces the downward percolation of wastewater by enhancing evapotranspiration to the atmosphere.
3. An applicant may use a subsurface drip irrigation disposal works to overcome site constraints, such as high groundwater, shallow soils, slowly permeable soils, or highly permeable soils, or if water conservation is needed.
4. The subsurface drip irrigation disposal works includes pipe, pressurization and dosing components, controls, and appurtenances to reliably deliver treated wastewater to driplines using supply and return manifold lines.

B. Performance. An applicant shall ensure that:
1. Treated wastewater that meets the following criteria is delivered to a subsurface drip irrigation disposal works:
   a. Performance Category A.
      i. TSS of 20 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 20 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of one colony forming unit per 100 milliliters, 95th percentile; or
   b. Performance Category B.
      i. TSS of 30 milligrams per liter, 30-day arithmetic mean;
      ii. BOD_5 of 30 milligrams per liter, 30-day arithmetic mean;
      iii. Total nitrogen (as nitrogen) of 53 milligrams per liter, five-month arithmetic mean; and
      iv. Total coliform level of 300,000 (Log_{10} 5.5) colony forming units per 100 milliliters, 95th percentile; and
2. The subsurface drip irrigation works is designed to meet the following performance criteria:
   a. Prevention of ponding on the land surface, and
   b. Incorporation of a fail-safe wastewater control or operational process to prevent inadequately treated wastewater from being discharged.

C. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements in R18-9-A301(B), R18-9-A309(B), and R18-9-E304, the applicant shall submit:
1. Documentation of the pretreatment method proposed to achieve the wastewater criteria specified in subsection (B)(1), such as the type of pretreatment system and the manufacturer's warranty;
2. Initial filter and drip irrigation flushing settings;
3. Site evapotranspiration calculations if used to reduce the size of the disposal works; and
4. If supplemental irrigation water is introduced to the subsurface drip irrigation disposal works, an identification of the cross-connection controls, backflow controls, and supplemental water sources.

D. Design requirements. In addition to the applicable design requirements specified in R18-9-A312, an applicant shall ensure that:
1. The design requirements of R18-9-E304 are followed, except that:
   a. The requirement for quick disconnects in R18-9-E304(D)(1)(c) is not applicable, and
   b. The applicant may provide the reserve volume specified in R18-9-E304(D)(3)(a)(iv) in an oversized treatment tank or a supplemental storage tank;
2. Drip irrigation components and appurtenances are properly placed.
   a. Performance category A subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed to prevent ponding on the land surface, and
      ii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; or
   b. Performance category B subsurface drip irrigation disposal works. The applicant shall ensure that:
      i. Driplines and emitters are placed at least 6 inches below the surface of the native soil;
      ii. A cover of soil or engineered fill is placed on the surface of the native soil to achieve a total emitter burial depth of at least 12 inches;
      iii. Cover material and placement depth follow manufacturer's requirements to prevent physical damage or ultraviolet degradation of components and appurtenances; and
      iv. The drip irrigation disposal works is not used for irrigating food crops;
3. Wastewater is filtered upstream of the dripline emitters to remove particles 100 microns in size and larger;
4. A pressure regulator is provided to limit the pressure of wastewater in the drip irrigation disposal works;
5. Wastewater pipe meets the approved pressure rating in "Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Pipe, Schedules 40, 80, and 120, D1785-04a (2004)," or "Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Pipe, Schedules 40 and 80, F441/F441M-02 (2002)," published by the American Society for Testing and Materials. This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959;
6. The system design flushes the subsurface drip irrigation disposal works components with wastewater at a minimum velocity of 2 feet per second, unless the manufacturer's manual and warranty specify another flushing practice. The applicant shall ensure that piping and appurtenances allow the wastewater to be pumped in a line flushing mode of operation with discharge returned to the treatment system headworks;
7. Air vacuum release valves are installed to prevent water and soil drawback into the emitters;
8. Driplines.
   a. Driplines are placed from 12 to 24 inches apart unless other configurations are allowed by the manufacturer's specifications;
   b. Dripline installation and design requirements, including the allowable deflection, follow manufacturer's requirements;
   c. The maximum length of a single dripline follows manufacturer's specifications to provide even distribution;
   d. The dripline incorporates a herbicide to prevent root intrusion for at least 10 years;

e. The dripline incorporates a bactericide to reduce bacterial slime buildup;
f. Disinfection does not reduce the life of the bactericide or herbicide in the dripline;
g. Any return flow from a drip irrigation disposal works to the treatment works does not impair the treatment performance; and
h. When dripline installation is under subsection (E)(1)(b) or (c), backfill consists of the excavated soil or similar soil obtained from the site that is screened for removal of debris and rock larger than 1/2-inch;

9. Emitters.
   a. Emitters are spaced no more than 2 feet apart, and
   b. Emitters are designed to discharge from 0.5 to 1.5 gallons per hour;
10. A suitable backflow prevention system is installed if supplemental water for irrigation is introduced to the pumping system. The applicant shall not introduce supplemental water to the treatment works;
11. The drip irrigation disposal works is installed in soils classified as:
    a. Sandy clay loam, clay loam, silty clay loam, or finer with weak platy structure or in soil with a percolation rate from 45 to 120 minutes per inch;
    b. Sandy clay loam, clay loam, silty clay loam, or silt loam with massive structure or in soil with a percolation rate from 31 to 120 minutes per inch; and
    c. Other soils if an appropriate site-specific SAR is determined;
12. The minimum vertical separation distances are 1/2 of those specified in R18-9-A312(E)(2) if the design evapotranspiration rate during the wettest 30-day period of the year is 50 percent or more of design flow, except that the applicant shall not use a minimum vertical separation distance less than 1 foot;
13. In areas where freezing occurs, the irrigation system is protected as recommended by the manufacturer;
14. If drip irrigation components are used for a disposal works using a shaded trench constructed in native soil, the following requirements are met:
    a. The trench is between 12 and 24 inches wide;
    b. The trench bottom is between 12 and 30 inches below the original grade of native soil and level to within 2 inches per 100 feet of length;
    c. Two driplines are positioned in the bottom of the trench, not more than 4 inches from each sidewall;
    d. The trench with the positioned driplines is filled to a depth of 6 to 10 inches with decomposed granite or C-33 sand or a mixture of both, with mixture composition, if applicable, and placement specified on the construction drawing;
    e. A minimum of 8 inches of backfill is placed over the decomposed granite or C-33 sand fill to an elevation of 1 to 3 inches above the native soil finished grade;
    f. Observation ports are placed at both ends of each shaded trench to confirm the saturated wastewater level during operation; and
    g. A separation distance of 24 inches or more is maintained between the nearest sidewall of an adjacent trench; and
15. The soil absorption area used for design of a drip irrigation works is calculated using:
    a. For a design that uses the shaded trench method described in subsection (D)(14), the bottom and sidewall area of the shaded trench not more than 4 square feet per linear foot of trench; or
    b. For all other designs, the number of emitters times an area for each emitter where the emitter area is a square centered on each emitter with the side dimension equal to the emitter separation distance selected by the designer in accordance with R18-9-E322(D)(9)(a), excluding all areas of overlap of adjacent squares.

E. Installation requirements. In addition to the applicable requirements in R18-9-A313(A) and R18-9-E304, the applicant shall ensure that:
1. The dripline is installed by:
   a. A plow mechanism that cuts a furrow, dispenses pipe, and covers the dripline in one operation;
   b. A trencher that digs a trench 4 inches wide or less;
   c. Digging the trench with hand tools to minimize trench width and disruption to the native soil; or
   d. Without trenching, removing surface vegetation, scarifying the soil parallel with the contours of the land surface, placing the pipe grid, and covering with fill material, unless prohibited in subsection (D)(2)(b)(ii);
2. Drip irrigation pipe is stored to preserve the herbicidal and bactericidal characteristics of the pipe;
3. Pipe deflection conforms to the manufacturer's requirements and installation is completed without kinking to prevent flow restriction;
4. A shaded trench drip irrigation disposal works is installed as specified in the design documents used for the Construction Authorization; and
5. The pressure piping and electrical equipment are installed according to the Construction Authorization in R18-9-A301(D)(1)(c) and any local building codes.

F. Operation and maintenance requirements. In addition to the applicable requirements in R18-9-A313(B) and R18-9-E304, the permittee shall:
1. Test any fail-safe wastewater control or operational process quarterly to ensure proper operation to prevent discharge of inadequately treated wastewater, and
2. Maintain the herbicidal and bacteriological capability of the drip irrigation disposal works.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-E323. 4.23 General Permit: 3000 to less than 24,000 Gallons Per Day Design Flow

A. A 4.23 General Permit allows for the construction and use of an on-site wastewater treatment facility with a design flow from 3000 gallons per day to less than 24,000 gallons per day or more than one on-site wastewater treatment facility on a property or on adjacent properties under common ownership with an combined design flow from 3000 to less than 24,000 gallons per day if all of the following apply:
1. Except as specified in subsection (A)(3), the treatment and disposal works consists of technologies or designs that are covered under other general permits, but are sized larger to accommodate increased flows;

2. The on-site wastewater treatment facility complies with all applicable requirements of Articles 1, 2, and 3 of this Chapter;
3. The facility is not a system or a technology covered by one of the following general permits available for a design flow of less than 3000 gallons per day:
   a. An aerobic system with subsurface or surface disposal described in R18-9-E315;
   b. A disinfection device described in R18-9-E320; or
   c. A seepage pit or pits described in R18-9-E302; and
4. The discharge of total nitrogen to groundwater is controlled.
   a. An applicant shall:
      i. Demonstrate that the nitrogen loading calculated over the property served by the on-site wastewater treatment facility, including streets, common areas, and other non-contributing areas, is not more than 0.088 pounds (39.9 grams) of total nitrogen per day per acre calculated at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field; or
      ii. Justify a nitrogen loading that is equally protective of aquifer water quality as the nitrogen loading specified in subsection (A)(4)(a)(i) based on site-specific hydrogeological or other factors.
   b. For purposes of the demonstration in subsection (A)(4)(a)(i), the applicant may assume that 0.0333 pounds (15.0 grams) of total nitrogen per day per person is contributed to raw sewage and may determine the nitrogen concentration in the treated wastewater at a horizontal plane immediately beneath the zone of active treatment of the on-site wastewater treatment facility including its disposal field.

B. Notice of Intent to Discharge. In addition to the Notice of Intent to Discharge requirements specified in R18-9-A301(B) and R18-9-A309(B), an applicant shall submit:
1. A performance assurance plan consisting of tasks, schedules, and estimated annual costs for operating, maintaining, and monitoring performance over a 20-year operational life;
2. Design documents and the performance assurance plan, signed, dated, and sealed by an Arizona-registered professional engineer;
3. Any documentation submitted under the alternative design procedure in R18-9-A312(G) that pertains to achievement of better performance levels than those specified in the general permit for the corresponding facility with a design flow of less than 3000 gallons per day, or for any other alternative design, construction, or operational change proposed by the applicant; and
4. A demonstration of total nitrogen discharge control specified in subsection (A)(4).

C. Design requirements. The applicant shall comply with the applicable requirements in R18-9-A312 and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

D. Installation requirements. The applicant shall comply with the applicable requirements in R18-9-A313(A) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

E. Operation and maintenance requirements. The applicant shall comply with the applicable requirements in R18-9-A313(B) and the applicable general permits for the treatment works and disposal works used in the design of the on-site wastewater treatment facility.

F. Additional Discharge Authorization requirements. In addition to any other requirements, the applicant shall submit the following information before the Discharge Authorization is issued.
1. A signed, dated, and sealed Engineer's Certificate of Completion in a format approved by the Department affirming that:
   a. The project was completed in compliance with the requirements of this Section and as described in the plans and specifications, or
   b. Any changes are reflected in as-built plans submitted with the Engineer's Certificate of Completion.
2. The name of the service provider or certified operator that is responsible for implementing the performance assurance plan.

G. Reporting requirement. The permittee shall provide the Department with the following information on the anniversary date of the Discharge Authorization:
1. A form signed by the certified operator or service provider that:
   a. Provides any data or documentation required by the performance assurance plan,
   b. Certifies compliance with the requirements of the performance assurance plan, and
   c. Describes any additions to the facility during the year that increased flows and certifies that the flow did not exceed 24,000 gallons per day during any day; and
2. Any applicable fee required by 18 A.A.C. 14.

H. Facility expansion. If an expansion of an on-site wastewater treatment facility operating under this Section involves the installation of a separate on-site wastewater treatment facility on the property with a design flow of less than 3000 gallons per day, the applicant shall submit the applicable Notice of Intent to Discharge and fee required under 18 A.A.C. 14 for the separate on-site wastewater treatment facility.
1. The applicant shall indicate in the Notice of Intent to Discharge the Department's file number and the issuance date of the Discharge Authorization previously issued by the Director under this Section for the property.
2. Upon satisfactory review, the Director shall reissue the Discharge Authorization for this Section, with the new issuance date and updated information reflecting the expansion.
3. If the expansion causes the accumulative design flow from on-site wastewater treatment facilities on the property to equal or exceed 24,000 gallons per day, the Director shall not reissue the Discharge Authorization, but shall require the applicant to submit an application for an individual permit addressing all proposed and operating facilities on the property.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

Table 1. Unit Design Flows

Wastewater Source	Applicable Unit	Sewage Design Flow per Applicable Unit, Gallons Per Day
Airport	Passenger (average daily number) Employee	4 15
Auto Wash	Facility	Per manufacturer, if consistent with this Chapter
Bar/Lounge	Seat	30
Barber Shop	Chair	35
Beauty Parlor	Chair	100
Bowling Alley (snack bar only)	Lane	75
Camp Day camp, no cooking facilities Campground, overnight, flush toilets Campground, overnight, flush toilets and shower Campground, luxury Camp, youth, summer, or seasonal	 Camping unit Camping unit Camping unit Person Person	 30 75 150 100-150 50
Church Without kitchen With kitchen	 Person (maximum attendance) Person (maximum attendance)	 5 7
Country Club	Resident Member Nonresident Member	100 10
Dance Hall	Patron	5
Dental Office	Chair	500
Dog Kennel	Animal, maximum occupancy	15
Dwelling For determining design flow for sewage treatment facilities under R18-9-B202(A)(9)(a) and sewage collection systems under R18-9-E301(D) and R18-9-B301(K), excluding peaking factor.	Person	80
Dwelling For on-site wastewater treatment facilities per R18-9-E302 through R18-9-E323: Apartment Building 1 bedroom 2 bedroom 3 bedroom 4 bedroom Seasonal or Summer Dwelling (with recorded seasonal occupancy restriction) Single Family Dwellings Other than Single Family Dwelling, the greater flow value based on: Bedroom count 1-2 bedrooms Each bedroom over 2 Fixture count	 Apartment Apartment Apartment Apartment Resident see R18-9-A314(D)(1) Bedroom Bedroom Fixture unit	 200 300 400 500 100 see R18-9-A314(D)(1) 300 150 25
Fire Station	Employee	45
Hospital All flows Kitchen waste only Laundry waste only	 Bed Bed Bed	 250 25 40

Hotel/motel		
Without kitchen	Bed (2 person)	50
With kitchen	Bed (2 person)	60
Industrial facility		
Without showers	Employee	25
With showers	Employee	35
Cafeteria, add	Employee	5
Institutions		
Resident	Person	75
Nursing home	Person	125
Rest home	Person	125
Laundry		
Self service	Wash cycle	50
Commercial	Washing machine	Per manufacturer, if consistent with this Chapter
Office Building	Employee	20
Park (temporary use)		
Picnic, with showers, flush toilets	Parking space	40
Picnic, with flush toilets only	Parking space	20
Recreational vehicle, no water or sewer connections	Vehicle space	75
Recreational vehicle, with water and sewer connections	Vehicle space	100
Mobile home/Trailer	Space	250
Restaurant/Cafeteria	Employee	20
With toilet, add	Customer	7
Kitchen waste, add	Meal	6
Garbage disposal, add	Meal	1
Cocktail lounge, add	Customer	2
Kitchen waste disposal service, add	Meal	2
Restroom, public	Toilet	200
School		
Staff and office	Person	20
Elementary, add	Student	15
Middle and High, add	Student	20
with gym & showers, add	Student	5
with cafeteria, add	Student	3
Boarding, total flow	Person	100
Service Station with toilets	First bay	1000
	Each additional bay	500
Shopping Center, no food or laundry	Square foot of retail space	0.1
Store	Employee	20
Public restroom, add	Square foot of retail space	0.1
Swimming Pool, Public	Person	10
Theater		
Indoor	Seat	5
Drive-in	Car space	10

Note: Unit flow rates published in standard texts, literature sources, or relevant area or regional studies are considered by the Department, if appropriate to the project.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 235, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 4. NITROGEN MANAGEMENT GENERAL PERMITS

R18-9-401. Definitions

In addition to the definitions established in A.R.S. §§ 49-101 and 49-201 and A.A.C. R18-9-101, the following terms apply to this Article:

1. "Application of nitrogen fertilizer" means any use of a substance containing nitrogen for the commercial production of a crop or plant. The commercial production of a crop or plant includes commercial sod farms and nurseries.
2. "Contact stormwater" means stormwater that comes in contact with animals or animal wastes within a concentrated animal feeding operation.
3. "Crop or plant needs" means the amount of water and nitrogen required to meet the physiological demands of a crop or plant to achieve a defined yield.

49-201. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.

2. "Aquifer" means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

3. "Best management practices" means those methods, measures or practices to prevent or reduce discharges and includes structural and nonstructural controls and operation and maintenance procedures. Best management practices may be applied before, during and after discharges to reduce or eliminate the introduction of pollutants into receiving waters. Economic, institutional and technical factors shall be considered in developing best management practices.

4. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

5. "Clean closure" means implementation of all actions specified in an aquifer protection permit, if any, as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards at the applicable point of compliance or, if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in section 49-243, subsection B, paragraph 3. Clean closure also means postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.

6. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended.

7. "Closed facility" means:

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation.

(b) A facility that has been approved as a clean closure by the director.

(c) A facility at which any postclosure monitoring and maintenance plan, notifications and approvals required in a permit have been completed.

8. "Concentrated animal feeding operation" means an animal feeding operation that meets the criteria prescribed in 40 Code of Federal Regulations part 122, appendix B for determining a concentrated animal feeding operation for purposes of 40 Code of Federal Regulations sections 122.23 and 122.24, appendix C.

9. "Department" means the department of environmental quality.

10. "Direct reuse" means the beneficial use of reclaimed water for specific purposes authorized pursuant to section 49-203, subsection A, paragraph 7.

11. "Director" means the director of environmental quality or the director's designee.

12. "Discharge" means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means

the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

13. "Discharge impact area" means the potential areal extent of pollutant migration, as projected on the land surface, as the result of a discharge from a facility.

14. "Discharge limitation" means any restriction, prohibition, limitation or criteria established by the director, through a rule, permit or order, on quantities, rates, concentrations, combinations, toxicity and characteristics of pollutants.

15. "Effluent-dependent water" means a surface water or portion of a surface water that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.

16. "Environment" means WOTUS, any other surface waters, groundwater, drinking water supply, land surface or subsurface strata or ambient air, within or bordering on this state.

17. "Ephemeral water" means a surface water or portion of surface water that flows or pools only in direct response to precipitation.

18. "Existing facility" means a facility on which construction began before August 13, 1986 and that is neither a new facility nor a closed facility. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin, as part of a continuous on-site construction program any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

19. "Facility" means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

20. "Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.

21. "Hazardous substance" means:

(a) Any substance designated pursuant to sections 311(b)(2)(A) and 307(a) of the clean water act.

(b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.

(c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.

(d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).

(e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).

(f) Any substance that the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this

paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

22. "Inert material" means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

23. "Intermittent water" means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.

24. "Major modification" means a physical change in an existing facility or a change in its method of operation that results in a significant increase or adverse alteration in the characteristics or volume of the pollutants discharged, or the addition of a process or major piece of production equipment, building or structure that is physically separated from the existing operation and that causes a discharge, provided that:

(a) A modification to a groundwater protection permit facility as defined in section 49-241.01, subsection C that would qualify for an area-wide permit pursuant to section 49-243 consisting of an activity or structure listed in section 49-241, subsection B shall not constitute a major modification solely because of that listing.

(b) For a groundwater protection permit facility as defined in section 49-241.01, subsection C, a physical expansion that is accomplished by lateral accretion or upward expansion within the pollutant management area of the existing facility or group of facilities shall not constitute a major modification if the accretion or expansion is accomplished through sound engineering practice in a manner compatible with existing facility design, taking into account safety, stability and risk of environmental release. For a facility described in section 49-241.01, subsection C, paragraph 1, expansion of a facility shall conform with the terms and conditions of the applicable permit. For a facility described in section 49-241.01, subsection C, paragraph 2, if the area of the contemplated expansion is not identified in the notice of disposal, the owner or operator of the facility shall submit to the director the information required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

25. "New facility" means a previously closed facility that resumes operation or a facility on which construction was begun after August 13, 1986 on a site at which no other facility is located or to totally replace the process or production equipment that causes the discharge from an existing facility. A major modification to an existing facility is deemed a new facility to the extent that the criteria in section 49-243, subsection B, paragraph 1 can be practicably applied to such modification. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

26. "Nonpoint source" means any conveyance that is not a point source from which pollutants are or may be discharged to WOTUS.

27. "Non-WOTUS protected surface water" means a protected surface water that is not a WOTUS.

28. "Non-WOTUS waters of the state" means waters of the state that are not WOTUS.

29. "On-site wastewater treatment facility" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

30. "Ordinary high watermark" means the line on the shore of an intermittent or perennial protected surface water established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the channel, floodplain and riparian area.

31. "Perennial water" means a surface water or portion of surface water that flows continuously throughout the year.

32. "Permit" means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility. For the purposes of regulating non-WOTUS protected surface waters, a permit shall not include provisions governing the construction, operation or modification of a facility except as necessary for the purpose of ensuring that a discharge meets water quality-related effluent limitations or to require best management practices for the purpose of ensuring that a discharge does not cause an exceedance of an applicable surface water quality standard.

33. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.

34. "Point source" means any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged to WOTUS or protected surface water. Point source does not include return flows from irrigated agriculture.

35. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

36. "Postclosure monitoring and maintenance" means those activities that are conducted after closure notification and that are necessary to:

(a) Keep the facility in compliance with either the aquifer water quality standards at the applicable point of compliance or, for any aquifer water quality standard that is exceeded at the time the aquifer protection permit is issued, the requirement to prevent the facility from further degrading the aquifer at the applicable point of compliance as provided under section 49-243, subsection B, paragraph 3.

(b) Verify that the actions or controls specified as closure requirements in an approved closure plan or strategy are routinely inspected and maintained.

(c) Perform any remedial, mitigative or corrective actions or controls as specified in the aquifer protection permit or perform corrective action as necessary to comply with this paragraph and article 3 of this chapter.

(d) Meet property use restrictions.

37. "Practicably" means able to be reasonably done from the standpoint of technical practicability and, except for pollutants addressed in section 49-243, subsection I, economically achievable on an industry-wide basis.

38. "Protected surface waters" means waters of the state listed on the protected surface waters list under section 49-221, subsection G and all WOTUS.

39. "Public waters" means waters of the state open to or managed for use by members of the general public.

40. "Recharge project" means a facility necessary or convenient to obtain, divert, withdraw, transport, exchange, deliver, treat or store water to infiltrate or reintroduce that water into the ground.

41. "Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.

42. "Regulated agricultural activity" means the application of nitrogen fertilizer or a concentrated animal feeding operation.

43. "Safe drinking water act" means the federal safe drinking water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

44. "Standards" means water quality standards, pretreatment standards and toxicity standards established pursuant to this chapter.

45. "Standards of performance" means performance standards, design standards, best management practices, technologically based standards and other standards, limitations or restrictions established by the director by rule or by permit condition.

46. "Tank" means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

47. "Toxic pollutant" means a substance that will cause significant adverse reactions if ingested in drinking water. Significant adverse reactions are reactions that may indicate a tendency of a substance or mixture to cause long lasting or irreversible damage to human health.

48. "Trade secret" means information to which all of the following apply:

(a) A person has taken reasonable measures to protect from disclosure and the person intends to continue to take such measures.

(b) The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.

(c) No statute specifically requires disclosure of the information to the public.

(d) The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

49. "Vadose zone" means the zone between the ground surface and any aquifer.

50. "Waters of the state" means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.

51. "Well" means a bored, drilled or driven shaft, pit or hole whose depth is greater than its largest surface dimension.

52. "Wetland" means, for the purposes of non-WOTUS protected surface waters, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

53. "WOTUS" means waters of the state that are also navigable waters as defined by section 502(7) of the clean water act.

54. "WOTUS protected surface water" means a protected surface water that is a WOTUS.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. 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.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. 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.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of 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 health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. 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.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. 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.

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 B 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 B, 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.

49-241.01. Groundwater protection permit facilities; schedule; definition

A. The director shall complete the issuance or denial of aquifer protection permits or clean closure approval for all groundwater protection permit facilities on the following schedule:

1. By January 1, 2004, for all groundwater protection permits for nonmining facilities.

2. By January 1, 2006, for all groundwater protection permits for mining facilities.

B. The failure by the director to issue or deny an aquifer protection permit for a groundwater protection permit facility within the time prescribed by this section does not excuse a person from continuing to comply with all statutory and regulatory requirements applicable to that person's facility.

C. For purposes of this section, "groundwater protection permit facility" means either of the following:

1. A facility for which a groundwater quality protection permit was issued pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

2. A facility for which a notice of disposal was filed pursuant to the Arizona administrative code and for which an aquifer protection permit has never been issued.

49-241.02. Aquifer protection permit program fees

A. The department shall adopt by rule fees to pay the expenses incurred in implementing the aquifer protection permit program. 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.

B. If the department contracts with a consultant under section 49-203, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and agreeing to pay to the department the costs of the consultant's services regardless of the other provisions of this section.

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.

2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.

3. Injection wells.

4. Land treatment facilities.

5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.

6. Mine tailings piles and ponds.

7. Mine leaching operations.

8. Underground water storage facilities.

9. Sewage treatment facilities, including on-site wastewater treatment facilities.

10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, is available to the public on request.

E. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

49-242. Procedural requirements for individual permits; annual registration of permittees; fee

A. The director shall prescribe by rule requirements for issuing, denying, suspending or modifying individual permits, including requirements for submitting notices, permit applications and any additional information necessary to determine whether an individual permit should be issued, and shall prescribe conditions and requirements for individual permits.

B. Each owner of an injection well, a land treatment facility, a dry well, an on-site wastewater treatment facility with a capacity of more than three thousand gallons per day, a recharge facility or a facility that discharges to protected surface waters to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily discharge of pollutants pursuant to subsection E of this section.

C. Each owner of a surface impoundment, a facility that adds a pollutant to a salt dome formation, salt bed formation, underground cave or mine, a mine tailings pile or pond, a mine leaching operation, a sewage or sludge pond or a wastewater treatment facility to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily influent of pollutants pursuant to subsection E of this section.

D. Pending the issuance of individual or area-wide aquifer protection permits, each owner of a facility that is prescribed in subsection B or C of this section that is operating on September 27, 1990 pursuant to the filing of a notice of disposal or a groundwater quality protection permit issued under title 36 shall register the notice of disposal or the permit with the director each year and shall pay an annual registration fee for each notice of disposal or permit based on the total daily influent or discharge of pollutants pursuant to subsection E of this section.

E. The director shall establish by rule an annual registration fee for facilities prescribed by subsections B, C and D of this section. The fee shall be measured in part by the amount of discharge or influent per day from the facility.

F. For a site with more than one permit subject to the requirements of this section, the owner or operator of the facility at that site shall pay the annual registration fee prescribed pursuant to subsection E of this section based on the permit that covers the greatest gallons of discharge or influent per day plus one-half of the annual registration fee for gallons of discharge or influent for each additional permit.

G. The director shall prescribe the procedures to register the notice of disposal or permit and collect the fee under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund to pay the reasonable and necessary costs of administering the registration program.

49-243.01. Presumptive best available demonstrated control technology

A. The director may establish, by rule, presumptive best available demonstrated control technology, processes, operating methods or other alternatives, consistent with section 49-243, subsection B, paragraph 1, for a class of facilities, if the director determines that the facilities in that class are substantially similar in nature. Once presumptive controls are established by rule for a particular class of facilities the director shall review those rules every five years and, if appropriate, revise the rules for that class of facilities.

B. An owner or operator of a facility who applies for an individual permit under section 49-243 shall be deemed to have demonstrated that the design meets the requirements of section 49-243, subsection B, paragraph 1, if the application incorporates the presumptive controls for that class of facilities established pursuant to subsection A of this section.

C. A person or group of persons who own or operate facilities that are required to obtain a permit pursuant to this article may petition the director to establish by rule presumptive best available demonstrated control technology, processes, operating methods or other alternatives for that class of facilities. The director may grant the petition if he determines that the following conditions have been met:

1. The petition identifies the class of facilities for which rule adoption is requested.

2. The petition includes a description of the presumptive controls for the requested class of facilities.

3. The petition complies with section 41-1033.

4. The class of facilities described in the petition satisfies subsection A of this section.

D. The owner or operator of a facility with a permit shall not be required to obtain a new or modified permit because of rules adopted or revised pursuant to subsection A of this section. Any complete application that is filed before the effective date of any rules adopted or revised pursuant to this section shall be processed by the department without requiring compliance with the rules adopted or revised pursuant to subsection A of this section.

49-243. Information and criteria for issuing individual permit; definition

A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.

2. A description of how the facility will be operated.

3. Existing and proposed pollutant control measures.

4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.

5. The use of water from aquifers in the discharge impact area.

6. The existing quality of the water in the aquifers in the discharge impact area.

7. The characteristics of the pollutants discharged by the facility.

8. Closure strategy.

9. Any other relevant federal or state permits issued to the applicant.

10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.

(b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.

(c) The age of equipment and facilities involved.

(d) The industrial and control process employed.

(e) The engineering aspects of the application of various types of control techniques.

(f) Process changes.

(g) Non-water quality environmental impacts.

(h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.

3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for the purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For the purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.

2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241(b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.

2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).

3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director, by rule, may prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:

1. Monitoring requirements.

2. Record keeping and reporting requirements.

3. Contingency plan requirements.

4. Discharge limitations.

5. Compliance schedule requirements.

6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.

7. Alert levels that, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.

8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. With the consent of the applicant or permittee, the director may include in an aquifer protection permit for an existing facility the requirement that the applicant or permittee undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:

1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06 and the rules adopted pursuant to that section.

2. The pollutant that was discharged constituted a hazardous substance.

M. With the consent of the applicant or permittee, the director may include in an aquifer protection permit as a condition the mitigation measures authorized under section 49-286 instead of issuing a mitigation order under section 49-286.

N. The director may deny a permit for a facility if the director determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The following apply to an application for a permit or to an issued permit:

1. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions.

2. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. Except for a state or federal agency or a county, city, town or other local governmental entity, the cost estimate shall be based on the cost for the applicant or permittee to hire a third party to conduct the closure strategy or plan unless the financial responsibility mechanism provided pursuant to this subsection is a self-assurance or a guarantee and the director determines that the applicant or permittee is technically and financially capable of closing the facility at its own cost and, if necessary, of conducting postclosure monitoring and maintenance. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall update its cost estimate:

(a) For the duration of the permit on a periodic basis as scheduled in the permit but not more frequently than once every five years. The cost estimate shall be updated to adjust for inflation or as necessary to reflect increased or decreased costs resulting from changes to the facility or to the facility closure strategy or plan, or to any other relevant conditions related to the facility.

(b) For a significant amendment as defined by rule adopted by the director, if required to address incremental changes in the cost estimate that result from the significant amendment.

3. Except for a state or federal agency or a county, city, town or other local governmental entity, the applicant or permittee shall demonstrate financial responsibility to cover the estimated costs to close the facility and, if necessary, to conduct postclosure monitoring and maintenance by providing to the director for approval a financial assurance mechanism or combination of mechanisms as prescribed in rules adopted by the director or in 40 Code of Federal Regulations section 264.143 (f)(1) and (10) as of January 1, 2014. An applicant or permittee that demonstrates financial responsibility by means of a self-assurance or guarantee shall aggregate the estimated closure and postclosure costs for all aquifer protection permits in this state for which the applicant, permittee or guarantor has provided a self-assurance or a guarantee in order to determine whether the applicant, permittee or guarantor meets the applicable financial test.

4. The permittee shall maintain its demonstration of financial responsibility prescribed in this subsection for the duration of the individual permit. Except for a state or federal agency or a county, city, town or other local governmental entity, the permittee shall periodically demonstrate financial responsibility and report to the director that the financial assurance mechanism is being maintained as scheduled in the permit and as prescribed in paragraph 3 of this subsection but not more frequently than once every two years. The permit's applicable reporting schedule shall be based on the type of financial assurance mechanism that is selected pursuant to this subsection.

5. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section.

6. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required before completion of construction but shall be required before the department issues approval to operate. Financial assurance for a facility is not required pursuant to this section if substantially similar financial assurance for that facility is required and has been provided pursuant to other federal, state or local laws, and evidence of that financial assurance is filed with the director.

7. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively

for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1 of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:

1. A description of the pollutant management area and point or points of compliance.

2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and that are included in the area-wide permit.

3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.

4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

49-244. Point of compliance

The director shall designate a point or points of compliance for each facility receiving a permit under this article. For the purposes of this chapter, the point of compliance is the point at which compliance must be determined for either the aquifer water quality standards or, if an aquifer water quality standard is exceeded at the time the aquifer protection permit is issued, the requirement that there be no further degradation of the aquifer as provided in section 49-243, subsection B, paragraph 3. The point of compliance shall be a vertical plane downgradient of the facility that extends through the uppermost aquifers underlying that facility. For an aquifer that has no existing or reasonably foreseeable drinking water beneficial use, the director may establish monitoring for compliance in another aquifer in lieu of monitoring in the uppermost aquifer. The point of compliance shall be determined as follows:

1. Except as provided in paragraph 2 of this section, for a pollutant that is a hazardous substance the point of compliance is the limit of the pollutant management area. The pollutant management area is the limit projected in the horizontal plane of the area on which pollutants are or will be placed. The pollutant management area includes horizontal space taken up by any liner, dike or other barrier designed to contain pollutants in the facility. If the facility contains more than one discharging activity, the pollutant management area is described by an imaginary line circumscribing the several discharging activities.

2. A point of compliance for hazardous substances other than that identified in paragraph 1 of this section may be approved by the director if the facility owner or operator can demonstrate either:

(a) That it is technically impracticable or inappropriate considering the likely fate or transport of a pollutant in an aquifer to monitor at the boundary specified in paragraph 1 of this section.

(b) The alternative point of compliance will allow installation and operation of the monitoring facilities that are substantially less costly. Such a request by a facility owner or operator under this paragraph must be supported by an analysis of the volume and characteristics of the pollutants that may be discharged and the ability of the vadose zone to attenuate the particular pollutants that may be discharged, including such factors as climate, hydrology, geology and soil chemistry. In no event shall an alternative point of compliance be further from the boundary specified in paragraph 1 of this section than is necessary for purposes of this paragraph, subdivisions (a) and (b) of this paragraph, and in no event shall it be so located as to result in an increased threat to an existing or reasonably foreseeable drinking water source. In addition an alternate compliance point for a hazardous substance pursuant to this subdivision shall never be further downgradient than any of the following:

(i) The property boundary.

(ii) Any point of an existing or reasonably foreseeable future drinking water source.

(iii) Seven hundred fifty feet from the edge of the pollutant management area.

3. For pollutants that are not hazardous substances the director, in identifying a point of compliance, shall take into account the volume and characteristics of the pollutants, the practical difficulties associated with implementation of applicable water pollution control requirements, whether the facility is a new facility or an existing facility, water conservation and augmentation and the site-specific characteristics of the facility, including, but not limited to, climate, hydrology, geology, soil chemistry and pollutant levels in the aquifer. The point of compliance must be so located as to ensure protection of all current and reasonably foreseeable future uses of the aquifer.

49-245.01. Storm water general permit

A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act or article 3.1 of this chapter, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for these types of permits for any storm water discharges at the facility.

2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.

3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

49-245.02. General permit for certain discharges associated with man-made bodies of water

A. A general permit is issued for the following discharges:

1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The vadose zone injection wells are inventoried pursuant to the underground injection control program under either:

(i) State rules approved by the United States environmental protection agency pursuant to 42 United States Code section 300h.

(ii) Federal regulations adopted by the United States environmental protection agency pursuant to 42 United States Code section 300h.

(b) The discharge occurs only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after the inventory made pursuant to subdivision (a) of this paragraph.

(d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.

(e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.

(f) The vadose zone injection wells are not used for any other purpose.

2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:

(a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.

(b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.

(c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.

3. Point source discharges to protected surface waters from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:

(a) The discharges are subject to a valid national pollutant discharge elimination system permit or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter.

(b) The discharges occur only in response to storm events.

(c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.

B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243.

49-245. Criteria for issuing general permit

A. The director may issue by rule a general permit for a defined class of facilities if all of the following apply:

1. The cost of issuing individual permits cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

2. The facilities, activities or practices in the class are substantially similar in nature.

3. The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity will meet the applicable requirements in section 49-243 or, as to facilities for which the director has established best management practices, section 49-246.

B. In addition to other applicable enforcement actions, if a person violates the conditions of a general permit, the director may revoke the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended at any time by the director if necessary to comply with this chapter.

C. Rules establishing a general permit shall include terms and conditions to ensure that all discharges and facilities will meet the requirements of this chapter and shall provide for the collective or individual revocation of the general permit if necessary to ensure compliance with this chapter.

D. Rules adopted pursuant to subsection A of this section may require a person who owns or operates a facility seeking coverage under a general permit to notify the director of the person's intent to operate the facility pursuant to the general permit and pay the applicable fee required pursuant to section 49-203.

49-246. Criteria for developing best management practices

A. Pursuant to section 49-245, the director may issue a general permit for facilities requiring implementation of best management practices appropriate to the class of discharges to be regulated. The director shall:

1. Identify the aquifer water quality problem which must be addressed and determine that protection of aquifer water quality standards can be accomplished through development and implementation of a best management practice for the class of discharge.

2. Assign a specific advisory committee to create the specific class best management practice to regulate the problem and report its recommendations to the director on a specified schedule.

3. On issuing a general permit containing best management practices, make a reasonable effort to notify persons conducting or managing the activity subject to the best management practices of the requirements of the best management practices contained in the general permit.

B. The director may establish best management practices for the following facilities or activities:

1. On-site facilities for urban runoff.

2. Storm sewers.

3. Urban runoff.

4. Silvicultural activities.

5. Septic tank systems.

C. The director may by rule establish best management practices for additional facilities or activities pursuant to this section, if all of the following apply:

1. The facilities or activities meet the criteria in section 49-245, subsection A, paragraphs 1 and 2.

2. The individual facilities or activities within the class are conducted over a large geographic area.

49-247. Agricultural general permits; best management practices for regulated agricultural activities

A. The director shall adopt by rule, pursuant to the requirements of this section, agricultural general permits consisting of best management practices for regulated agricultural activities. Agricultural general permits are not subject to section 49-245 or 49-246. Except as provided in subsection G of this section, a person is not required to obtain an individual permit for a regulated agricultural activity.

B. The terms and conditions of agricultural general permits adopted pursuant to this section shall be agricultural best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities. Agricultural best management practices may vary within the state, according to regional and hydrogeologic conditions. The director may waive the use of best management practices in a designated region if the director determines that existing regulated agricultural activities will not cause or contribute to a violation of the adopted water quality standards.

C. The director shall adopt, by rule, agricultural best management practices.

D. In adopting agricultural best management practices, the director shall consider:

1. The availability, the effectiveness and the economic and institutional considerations of alternative technologies.

2. The potential nature and severity of discharges from regulated agricultural activities and their effect on public health and the environment.

E. In adopting best management practices for regulated agricultural activities, the director shall require the application of all economically feasible best management practices which have been determined by the director to be the most practical and effective means of reducing or preventing the discharge of pollutants by regulated agricultural activities but shall not require application of more stringent practices if such a requirement would result in cessation of the regulated activity.

F. Compliance with best management practices adopted pursuant to this section constitutes compliance with this article.

G. If the director, after providing a person with notice and an opportunity for a hearing, determines that the person has violated the applicable best management practices, the director may revoke the agricultural general permit for that person and require that the person obtain a permit pursuant to section 49-241.

H. The director may periodically reexamine, evaluate and propose any modification to or waiver of agricultural best management practices necessary to meet the requirements of this article.

49-249. Aquifer pollution information

The director shall make available to the public upon request and on the agency's web site every five years the levels of pollutants in aquifers in this state and the effects of regulation under this chapter in general and best management practices in particular on controlling or reducing pollution in aquifers.

49-250. Exemptions

A. The director, by rule, may exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from the facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.

B. The following are exempt from the aquifer protection permit requirement of this article:

1. Household and domestic activities.

2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.

3. The noncommercial use of consumer products generally available to and used by the public.

4. Ponds used for watering livestock and wildlife.

5. Mining overburden returned to the excavation site, including any common material that has been excavated and removed from the excavation site and that has not been subjected to any chemical or leaching agent or process of any kind.

6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 7 for beneficial use.

7. Discharge to a community sewer system.

8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.

9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.

10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act or article 3.1 of this chapter.

11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.

12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.

13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.

14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.

15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.

16. Discharges to a facility that is exempt pursuant to paragraph 6 of this subsection if those discharges are regulated pursuant to 33 United States Code section 1342 or article 3.1 of this chapter.

17. Solid waste and special waste facilities if rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall apply only if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-

761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.

18. Facilities used in:

(a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.

(b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.

(c) Corrective actions taken pursuant to the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

(d) Other remedial actions that have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.

19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.

20. Storage, treatment or disposal of inert material.

21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.

22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.

23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:

(a) Firefighting system testing and maintenance.

(b) Potable water sources, including waterline flushings.

(c) Irrigation drainage and lawn watering.

(d) Routine external building wash down without detergents.

(e) Pavement wash water if no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.

(f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.

(g) Foundation or footing drains in which flows are not contaminated with process materials.

(h) Occupational safety and health administration or mining safety and health administration safety equipment.

24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.

25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act or an Arizona pollutant discharge elimination system permit under article 3.1 of this chapter.

26. Except for class V wells that are operating as prescribed by rules adopted pursuant to article 3.3 of this chapter or 42 United States Code section 300h-1(c), any underground injection well covered by a permit issued under article 3.3 of this chapter or under 42 United States Code section 300h-1(c).

27. Coal combustion residuals units that are regulated under 40 Code of Federal Regulations part 257, subpart D or by a permit in effect under the coal combustion residuals program established pursuant to chapter 4, article 11 of this title and approved by the United States environmental protection agency as prescribed by 42 United State Code section 6945(d)(1).

49-251. Temporary emergency waiver

A. A facility owner or operator may apply for, and the director may issue, a temporary emergency waiver of compliance with the requirement to obtain a permit or with any applicable permit requirement, surface or aquifer water quality standard or discharge limitation if the waiver will not endanger human health or welfare, and if the director finds any of the following:

1. That an emergency of such severity exists that water supplies for domestic uses will be inadequate to meet demand unless the facility is able to temporarily exceed one or more water quality standards or discharge limitations by its discharge into waters of the state.

2. That there has been a breakdown of equipment or upset of operations resulting in a discharge to waters of the state in excess of one or more water quality standards or discharge limitations, and both of the following apply:

(a) The breakdown or upset was beyond the control of the facility owner or operator and the facility was being operated in compliance with this chapter before the discharge.

(b) The breakdown or upset will be corrected in a reasonable period of time.

3. That the activity that is the subject of the waiver is necessary to protect human health or welfare or minimize potential adverse impacts to the environment.

B. A temporary emergency waiver of compliance issued by the director may be subject to such reasonable terms and conditions as the director deems necessary. The director may grant a waiver after the occurrence of the activity that is subject to the waiver if the applicant demonstrates that exigent circumstances made it impractical to secure the waiver in advance.

C. As a condition to the issuance of a temporary emergency waiver of compliance, the director may require the facility owner or operator to provide notice of the waiver to all downstream or downgradient users directly affected by both:

1. Publication on not less than three consecutive days, or on three consecutive weeks in the case of weekly publications, in a newspaper or newspapers of general circulation in the area in which the emergency or breakdown has occurred or is occurring.

2. Furnishing a copy of the publication to the radio and television stations serving the area in which the emergency or breakdown has occurred or is occurring.

D. The facility owner or operator shall furnish a copy of the publication to the director.

E. A temporary emergency waiver of compliance issued pursuant to this section shall remain in effect as long as necessary to accommodate the emergency but in no event longer than ninety days.

F. A person operating under a temporary emergency waiver is not subject to section 49-262 or 49-263 for discharges allowed under the temporary emergency waiver but is subject to article 5 of this chapter.

49-252. Closure notification and approval

A. A person who owns or operates a dry well subject to this article or a groundwater protection permit facility as defined in section 49-241.01, subsection C or a person who has been issued a permit pursuant to this article shall notify the director of the intent to permanently cease an activity for which the facility or a portion of the facility was designed or operated.

B. Within ninety days of the notification in subsection A of this section, the owner or operator shall submit a closure plan to the director.

C. Within sixty days of submittal of a complete closure plan, the director shall determine whether or not the closure plan is for a clean closure.

D. If the director determines that the closure plan is for a clean closure, the director shall send a letter of approval to the owner or operator and no aquifer protection permit shall be required.

E. If the director determines that the proposed closure plan achieves a closure condition other than clean closure, the owner or operator shall submit either an application for an aquifer protection permit or a request to modify a current aquifer protection permit in order to address closure activities and postclosure monitoring and maintenance at the facility. The director shall require submittal of a permit application or a request to modify a permit within ninety days or a reasonable time not to exceed one year, if the applicant can supply a scope of work justifying a schedule for collecting the technical information necessary to apply.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: **March 6, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6, Article 1

Summary

This five-year review report from the Arizona Department of Health Services (Department) covers three (3) rules in Title 9, Chapter 6, Article 1 associated with Communicable Disease and Infestations. The Department is required to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases."

Proposed Action

Although the updates that need to be made to the rules are not substantive, the Department proposes to amend the rules to address the items mentioned in this report. These described changes will improve the clarity of the rules and consistency with other rules and statutes. The Department plans to submit a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by August 2023.

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

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:**

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." In general, the Department believes that the costs and benefits identified in the EIS are consistent with the benefits of the rule. However, due to minimal disclosure requests, the costs to the Department; local health agencies; public safety employers, employees, and volunteers; health care providers and hospitals; community-based organizations for obtaining and providing education about the rule is probably minimal rather than moderate.

Stakeholders are identified as the Department; local health agencies; public safety employers, employees, and volunteers; health care providers and hospitals; the owners or operators of businesses that might be the source of an exposure; individuals infected with a communicable disease, the contacts of individuals infected with a communicable disease, and community-based organizations that obtain and provide education about these 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 Department believes the requirements in the rules are the minimum necessary to achieve the statutory requirements. The Department believes that the protection of the health and safety of the citizens of Arizona, as well as visitors, outweigh the probable costs of the rules. The Department also believes that the rules impose the least burden and costs to persons regulated by the rule, 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?**

The Department indicates that they have not received any written criticisms of the rules in the last five years.

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

The Department indicates with the exception of the incorrect cross-reference in R9-6-101 and R9-6-103, the rules are generally clear, concise, and understandable.

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

The Department indicates that the rules are not consistent with other rules and statutes as follows:

R9-6-101: the definition of "designated service area" is no longer in A.A.C. R9-18-101, but has been recodified into A.A.C. R9-1-601; the definition of "food establishment" should reference the document incorporated by reference in A.A.C. R9-8-101.

R9-6-103: citation in subsection (A)(15) to A.R.S. § 41-313 is incorrect and should be changed to A.R.S. § 41-251.

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

The Department indicates the rules are effective in achieving their objective.

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

The Department indicates that 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?**

The Department indicates that the rules are not more stringent than corresponding federal law as federal law does not apply to these rules.

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 these rules do not require a permit or license.

11. **Conclusion**

As mentioned above, the Department believes that the rules are generally working well and accomplishing their intended purpose; they are generally clear, concise, and understandable and effective in achieving their objective. The Department plans on submitting a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by August 2023. For these reasons, Council staff believe the Board has submitted an adequate report and recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

February 2, 2023

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. 6, Article 1, Five-Year-Review Report for Communicable Diseases and Infestations

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 6, Article 1, which is due on or before April 28, 2023.

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,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services

Communicable Diseases and Infestations

Article 1. General

February 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-136(I)(1), 36-136(I)(11), 36-664

2. The objective of each rule:

Rule	Objective
R9-6-101	To define terms used the Chapter to enable the reader to understand clearly the requirements of the Chapter and allow for consistent interpretation.
R9-6-102	To specify the information that is required to be released to the Department or a local health agency when the Department or local health agency is investigating a communicable disease.
R9-6-103	To prescribe standards of significant exposure risk, To establish procedures for processing disclosure requests from Good Samaritans, and To establish procedures for disclosing requested communicable disease-related information to Good Samaritans.

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 __** **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

R9-6-101	In subsection (28), the definition of "designated service area" is no longer in A.A.C. R9-18-101, but has been recodified into A.A.C. R9-1-601. In subsection (35), the definition of "food establishment" should reference the document incorporated by reference in A.A.C. R9-8-101.
R9-6-103	The citation in subsection (A)(15) to A.R.S. § 41-313 is incorrect and should be changed to A.R.S. § 41-251.

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
Multiple	With the exception of the incorrect cross-references noted in paragraph 4, the rules are clear, concise, and understandable.

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:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing "reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." The Department has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6. R9-6-101 was last revised as part of a rulemaking effective January 1, 2018 that made changes throughout the Chapter. R9-6-102 was last revised in a rulemaking effective December 2, 2008. R9-6-103 was last revised in a rulemaking effective January 31, 2009. An economic, small business, and consumer impact statement (EIS) is available for each of these rulemakings.

The rulemaking effective January 1, 2018, extensively changed Articles 2 and 3 of 9 A.A.C. 6, and made corresponding and clarifying changes to R9-6-101. In the EIS for the 2018 rulemaking, annual cost/revenue changes were designated as minimal when more than $0 and $5,000 or less, moderate when between $5,000 and $30,000, and substantial when $30,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. As part of the rulemaking, changes in R9-6-101 included revising five definitions, adding two, and removing one. The Department believed that these changes made the rule clearer and provided a significant benefit to the Department, local health agencies, health care institutions, and other stakeholders and no-to-minimal costs to stakeholders to become acquainted with the rule changes. The Department believes that the costs and benefits identified in the EIS are consistent with the actual costs and benefits of the rule.

In the rulemaking for R9-6-102, the Department required a person in possession of communicable disease-related information requested for the purpose of detecting, preventing, or controlling communicable disease or the injury or disability that may arise due to a communicable disease to disclose this information to the Department or a local health agency. The Department or a local health agency has used this rule over 14 times since 2021 while conducting communicable disease investigations. Timely confirmation of outbreak sources allows for the removal of contaminated products from further public consumption, preventing additional illnesses. In the EIS for this rulemaking, annual cost/revenue changes were designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipated that this rule could cause a minimal-to-moderate cost to a business required to provide the information or to an individual identified as having a communicable disease, solely on the basis of the information provided, who was excluded from working under 9 A.A.C. 6, Article 3. The Department believed that the rule change would provide a minimal-to-substantial benefit to health care institutions, health care providers, the owners or operators of businesses that might be the source of an exposure, individuals infected with a communicable disease, and the contacts of individuals infected with a communicable. The Department believes that the costs and benefits identified in the EIS are generally consistent with the actual costs and benefits of the rule.

In the five years before R9-6-103 was adopted, the Department had received only two disclosure requests from Good Samaritans. The Department has no record of having received any requests for disclosure of information to Good Samaritans in the past five years. The EIS for the rulemaking designated annual costs/revenues changes as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost or benefit was listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipated that the rule could cause a minimal-to-moderate cost to the Department; local health agencies; public safety employers, employees, and volunteers; health care providers and hospitals; and community-based organizations for obtaining and providing education about the rule. The Department believed that owners or operators of businesses

employing a Good Samaritan or a contact of a Good Samaritan could incur minimal-to-substantial cost, due to employees being excluded from working under 9 A.A.C. 6, Article 3, because of exposure to a communicable disease, and health care providers and hospitals to incur a minimal-to-moderate reduction in revenue from fewer Good Samaritans needing treatment for a communicable disease acquired from an assisted person. A Good Samaritan was thought to possibly incur a minimal cost from submitting a request, and an assisted person to possibly incur a significant cost from having communicable disease-related information released to the Good Samaritan. The Department believed that the rule could provide a minimal-to substantial benefit to owners or operators of businesses employing a Good Samaritan or a contact of a Good Samaritan, to a Good Samaritan, and to contacts of Good Samaritan due to early detection and treatment of a communicable disease. Good Samaritans and their contacts could also experience a significant benefit from knowing how to request disclosure, the increase in the possibility of early detection and treatment, and a reduction in the risk of exposing others. Although no requests have been made in the last five years, the Department believes that the costs and benefits identified in the EISs are generally consistent with what the actual costs and benefits of the rule would have been if a request had been received. Given the number of requests, the costs to the Department; local health agencies; public safety employers, employees, and volunteers; health care providers and hospitals; and community-based organizations for obtaining and providing education about the rule is probably minimal rather than moderate.

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 2018 five-year-review report, the Department stated that the Department believed the rules were sufficient to protect public health and did not plan to amend the rules in 9 A.A.C. 6, Article 1, unless a threat to public health or safety arose that would require amending the rules. Since no such threat arose in the past five years, the Department complied with this 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 rules in 9 A.A.C. 6, Article 1, provide definitions of terms used in the Chapter, requirements for the release to the Department or a local health agency of communicable disease-related information when the Department or local health agency is investigating a communicable disease, and requirements related the disclosure of information to a Good Samaritan. They provide clarity and help to protect public health and safety consistent with statutory requirements. The Department believes the requirements in the rules are the minimum necessary to achieve the statutory requirements. The Department believes that the protection of the health and safety of the

citizens of Arizona, as well as visitors, outweigh the probable costs of the rules. The Department also believes that the rules impose the least burden and costs to persons regulated by the rule, 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. 6, Article 1.

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 9 A.A.C. 6, Article 1, do not require the issuance of a regulatory permit.

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 paragraph 4 are not substantive and do not inhibit a reader from understanding and complying with the rules, changing the rules to correct the cross-references may provide clarity to readers. The Department plans to revise the rules to address these items and to submit a Notice of Final Expedited Rulemaking to the Council by August 2023.

Current Rules in 9 A.A.C. 6, Article 1

ARTICLE 1. GENERAL

R9-6-101. Definitions

In this Chapter, unless otherwise specified:

1. "Active tuberculosis" means the same as in A.R.S. § 36-711.
2. "Administrator" means the individual who is the senior leader at a child care establishment, health care institution, correctional facility, school, pharmacy, or shelter.
3. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
4. "Agent" means an organism that may cause a disease, either directly or indirectly.
5. "AIDS" means Acquired Immunodeficiency Syndrome.
6. "Airborne precautions" means, in addition to use of standard precautions:
    a. Either:
        i. Placing an individual in a private room with negative air-pressure ventilation, at least six air exchanges per hour, and air either:
            (1) Exhausted directly to the outside of the building containing the room, or
            (2) Recirculated through a HEPA filtration system before being returned to the interior of the building containing the room; or
        ii. If the building in which an individual is located does not have an unoccupied room meeting the specifications in subsection (6)(a)(i):
            (1) Placing the individual in a private room, with the door to the room kept closed when not being used for entering or leaving the room, until the individual is transferred to a health care institution that has a room meeting the specifications in subsection (6)(a)(i) or to the individual's residence, as medically appropriate; and
            (2) Ensuring that the individual is wearing a mask covering the individual's nose and mouth; and
    b. Ensuring the use by other individuals, when entering the room in which the individual is located, of a device that is:
        i. Designed to protect the wearer against inhalation of an atmosphere that may be harmful to the health of the wearer, and
        ii. At least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator.
7. "Approved test for tuberculosis" means a Mantoux skin test or other test for tuberculosis recommended by the Centers for Disease Control and Prevention or the Tuberculosis Control Officer appointed under A.R.S. § 36-714.

8. "Arizona State Laboratory" means the part of the Department authorized by A.R.S. Title 36, Chapter 2, Article 2, and A.R.S. § 36-132(A)(11) that performs serological, microbiological, entomological, and chemical analyses.
9. "Average window period" means the typical time between exposure to an agent and the ability to detect infection with the agent in human blood.
10. "Barrier" means a mask, gown, glove, face shield, face mask, or other membrane or filter to prevent the transmission of infectious agents and protect an individual from exposure to body fluids.
11. "Body fluid" means semen, vaginal secretion, tissue, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid, urine, blood, lymph, or saliva.
12. "Carrier" means an infected individual without symptoms who can spread the infection to a susceptible individual.
13. "Case" means an individual:
    a. With a communicable disease whose condition is documented:
        i. By laboratory results that support the presence of the agent that causes the disease;
        ii. By a health care provider's diagnosis based on clinical observation; or
        iii. By epidemiologic associations with the communicable disease, the agent that causes the disease, or toxic products of the agent;
    b. Who has experienced diarrhea, nausea, or vomiting as part of an outbreak; or
    c. Who has experienced a vaccinia-related adverse event.
14. "Case definition" means the disease-specific criteria that must be met for an individual to be classified as a case.
15. "Chief medical officer" means the senior health care provider in a correctional facility or that individual's designee who is also a health care provider.
16. "Child" means an individual younger than 18 years of age.
17. "Child care establishment" means:
    a. A "child care facility," as defined in A.R.S. § 36-881;
    b. A "child care group home," as defined in A.R.S. § 36-897;
    c. A child care home registered with the Arizona Department of Education under A.R.S. § 46-321; or
    d. A child care home certified by the Arizona Department of Economic Security under A.R.S. Title 46, Chapter 7, Article 1.
18. "Clinical signs and symptoms" means evidence of disease or injury that can be observed by a health care provider or can be inferred by the health care provider from a patient's description of subjective complaints.
19. "Cohort room" means a room housing only individuals infected with the same agent and no other agent.

20. "Communicable disease" means an illness caused by an agent or its toxic products that arises through the transmission of that agent or its products to a susceptible host, either directly or indirectly.
21. "Communicable period" means the time during which an agent may be transmitted directly or indirectly:
    a. From an infected individual to another individual;
    b. From an infected animal, arthropod, or vehicle to an individual; or
    c. From an infected individual to an animal.
22. "Confirmatory test" means a laboratory analysis approved by the U.S. Food and Drug Administration to be used after a screening test to diagnose or monitor the progression of HIV infection.
23. "Contact" means an individual who has been exposed to an infectious agent in a manner that may have allowed transmission of the infectious agent to the individual during the communicable period.
24. "Correctional facility" means any place used for the confinement or control of an individual:
    a. Charged with or convicted of an offense,
    b. Held for extradition, or
    c. Pursuant to a court order for law enforcement purposes.
25. "Court-ordered subject" means a subject who is required by a court of competent jurisdiction to provide one or more specimens of blood or other body fluids for testing.
26. "Dentist" means an individual licensed under A.R.S. Title 32, Chapter 11, Article 2.
27. "Department" means the Arizona Department of Health Services.
28. "Designated service area" means the same as in R9-18-101.
29. "Diagnosis" means an identification of a disease by an individual authorized by law to make the identification.
30. "Disease" means a condition or disorder that causes the human body to deviate from its normal or healthy state.
31. "Emerging or exotic disease" means:
    a. A new disease resulting from change in an existing organism;
    b. A known disease not usually found in the geographic area or population in which it is found;
    c. A previously unrecognized disease appearing in an area undergoing ecologic transformation; or
    d. A disease reemerging as a result of a situation such as antimicrobial resistance in a known infectious agent, a breakdown in public health measures, or deliberate release.
32. "Entity" has the same meaning as "person" in A.R.S. § 1-215.

33. "Epidemiologic investigation" means the application of scientific methods to ascertain a diagnosis; identify risk factors for a disease; determine the potential for spreading a disease; institute control measures; and complete forms and reports such as communicable disease, case investigation, and outbreak reports.
34. "Fever" means a temperature of 100.4° F or higher.
35. "Food establishment" has the same meaning as in the document incorporated by reference in A.A.C. R9-8-107.
36. "Food handler" means:
    a. A paid or volunteer full-time or part-time worker who prepares or serves food or who otherwise touches food in a food establishment; or
    b. An individual who prepares food for or serves food to a group of two or more individuals in a setting other than a food establishment.
37. "Foodborne" means that food serves as a mode of transmission of an infectious agent.
38. "Guardian" means an individual who is invested with the authority and charged with the duty of caring for an individual by a court of competent jurisdiction.
39. "HBsAg" means hepatitis B surface antigen.
40. "Health care institution" has the same meaning as in A.R.S. § 36-401.
41. "Health care provider" means the same as in A.R.S. § 36-661.
42. "Health education" means supplying to an individual or a group of individuals:
    a. Information about a communicable disease or options for treatment of a communicable disease, and
    b. Guidance about methods to reduce the risk that the individual or group of individuals will become infected or infect other individuals.
43. "HIV" means Human Immunodeficiency Virus.
44. "HIV-related test" has the same meaning as in A.R.S. § 36-661.
45. "Infected" or "infection" means when an individual has an agent for a disease in a part of the individual's body where the agent may cause a disease.
46. "Infectious active tuberculosis" means pulmonary or laryngeal active tuberculosis in an individual, which can be transmitted from the infected individual to another individual.
47. "Infectious agent" means an agent that can be transmitted to an individual.
48. "Infant" means a child younger than 12 months of age.
49. "Isolate" means:
    a. To separate an infected individual or animal from others to limit the transmission of infectious agents, or
    b. A pure strain of an agent obtained from a specimen.
50. "Isolation" means separation, during the communicable period, of an infected individual or animal from others to limit the transmission of infectious agents.
51. "Laboratory report" means a document that:

a. Is produced by a laboratory that conducts a test or tests on a subject's specimen; and

b. Shows the outcome of each test, including personal identifying information about the subject.

52. "Local health agency" means a county health department, a public health services district, a tribal health unit, or a U.S. Public Health Service Indian Health Service Unit.

53. "Local health officer" means an individual who has daily control and supervision of a local health agency or the individual's designee.

54. "Medical evaluation" means an assessment of an individual's health by a physician, physician assistant, or registered nurse practitioner.

55. "Medical examiner" means an individual:

a. Appointed as a county medical examiner by a county board of supervisors under A.R.S. § 11-592, or

b. Employed by a county board of supervisors under A.R.S. § 11-592 to perform the duties of a county medical examiner.

56. "Multi-drug resistant tuberculosis" means active tuberculosis that is caused by bacteria that are not susceptible to the antibiotics isoniazid and rifampin.

57. "Officer in charge" means the individual in the senior leadership position in a correctional facility or that individual's designee.

58. "Outbreak" means an unexpected increase in incidence of a disease, infestation, or sign or symptom of illness.

59. "Parent" means a biological or adoptive mother or father.

60. "Person" has the same meaning as in A.R.S. § 1-215.

61. "Petition" means a formal written application to a court requesting judicial action on a matter.

62. "Pharmacy" has the same meaning as in A.R.S. § 32-1901.

63. "Physician" means an individual licensed as a doctor of:

a. Allopathic medicine under A.R.S. Title 32, Chapter 13;

b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;

c. Osteopathic medicine under A.R.S. Title 32, Chapter 17; or

d. Homeopathic medicine under A.R.S. Title 32, Chapter 29.

64. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.

65. "Pupil" means a student attending a school.

66. "Quarantine" means the restriction of activities of an individual or animal that has been exposed to a case or carrier of a communicable disease during the communicable period, to prevent transmission of the disease if infection occurs.

67. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.

68. "Respiratory disease" means a communicable disease with acute onset of fever and symptoms such as cough, sore throat, or shortness of breath.

69. "Risk factor" means an activity or circumstance that increases the chances that an individual will become infected with or develop a communicable disease.
70. "School" means:
    a. An "accommodation school," as defined in A.R.S. § 15-101;
    b. A "charter school," as defined in A.R.S. § 15-101;
    c. A "private school," as defined in A.R.S. § 15-101;
    d. A "school," as defined in A.R.S. § 15-101;
    e. A college or university;
    f. An institution that offers a "private vocational program," as defined in A.R.S. § 32-3001; or
    g. An institution that grants a "degree," as defined in A.R.S. § 32-3001, for completion of an educational program of study.
71. "Screening test" means a laboratory analysis approved by the U.S. Food and Drug Administration as an initial test to indicate the possibility that an individual is infected with a communicable disease.
72. "Sexual contact" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, or other deliberate interaction with another individual's genital area for a non-medical or non-hygienic reason.
73. "Shelter" means:
    a. A facility or home that provides "shelter care," as defined in A.R.S. § 8-201;
    b. A "homeless shelter," as defined in A.R.S. § 16-121; or
    c. A "shelter for victims of domestic violence," as defined in A.R.S. § 36-3001.
74. "Significant exposure" means the same as in A.R.S. § 32-3207.
75. "Standard precautions" means the use of barriers by an individual to prevent parenteral, mucous membrane, and nonintact skin exposure to body fluids and secretions other than sweat.
76. "Subject" means an individual whose blood or other body fluid has been tested or is to be tested.
77. "Submitting entity" means the same as in A.R.S. § 13-1415.
78. "Suspect case" means an individual whose medical history, signs, or symptoms indicate that the individual:
    a. May have or is developing a communicable disease;
    b. May have experienced diarrhea, nausea, or vomiting as part of an outbreak; or
    c. May have experienced a vaccinia-related adverse event.
79. "Syndrome" means a pattern of signs and symptoms characteristic of a disease.
80. "Test" means an analysis performed on blood or other body fluid to evaluate for the presence or absence of a disease.
81. "Test result" means information about the outcome of a laboratory analysis of a subject's specimen and does not include personal identifying information about the subject.

82. "Treatment" means a procedure or method to cure, improve, or palliate an illness or a disease.
83. "Tuberculosis control officer" means the same as in A.R.S. § 36-711.
84. "Vaccine" means a preparation of a weakened or killed agent, a portion of the agent's structure, or a synthetic substitute for a portion of the agent's structure that, upon administration into the body of an individual or animal, stimulates a response in the body to produce or increase immunity to a particular disease.
85. "Vaccinia-related adverse event" means a reaction to the administration of a vaccine against smallpox that requires medical evaluation of the reaction.
86. "Victim" means an individual on whom another individual is alleged to have committed a sexual offense, as defined in A.R.S. § 13-1415.
87. "Viral hemorrhagic fever" means disease characterized by fever and hemorrhaging and caused by a virus.
88. "Waterborne" means that water serves as a mode of transmission of an infectious agent.
89. "Working day" means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

R9-6-102. Release of Information

A person shall release information, including protected health information as defined in 45 CFR 160.103, to the Department or a local health agency upon request if the information is:

1. Requested by the Department or the local health agency for the purpose of:
   a. Detecting, preventing, or controlling a communicable disease; or
   b. Preventing injury or disability that may result from a communicable disease; and
2. In the possession of the person.

R9-6-103. Disclosure of Communicable Disease-Related Information to a Good Samaritan

A. In this Section, unless otherwise specified, the following definitions apply:

1. "Affidavit" means a voluntary declaration or statement of facts that is made in writing and under oath or affirmation.
2. "Assisted person" means the individual with whom a Good Samaritan alleges interaction constituting a significant exposure risk.
3. "Available" means in the possession of or accessible by the Designated Officer who is reviewing a disclosure request.
4. "Communicable disease-related information" has the same meaning as in A.R.S. § 36-661.
5. "Designated Officer" means an individual appointed by the Director or a local health officer to:
   a. Review a disclosure request from a Good Samaritan;

b. Determine whether disclosure of communicable disease-related information is required under A.R.S. § 36-664(E) and this Section; and

c. Respond to the Good Samaritan.

6. "Director" has the same meaning as in A.R.S. § 36-101.

7. "Disclosure request" means the information submitted by a Good Samaritan according to A.R.S. § 36-664(E) and subsection (C) or (D).

8. "Emergency care or assistance" means actions performed by an individual on or for another individual, which are necessary to prevent death or impairment of the health of the other individual.

9. "Emergency department" has the same meaning as in A.A.C. R9-11-101.

10. "Good Samaritan" has the same meaning as in A.R.S. § 36-661.

11. "In writing" means:

a. An original document,

b. A photocopy,

c. A facsimile, or

d. An e-mail.

12. "Medical consultation" means discussion between a Good Samaritan and:

a. A physician or a registered nurse practitioner working in an emergency department or urgent care unit;

b. An occupational health provider as defined in A.A.C. R9-6-801; or

c. Any other health care provider knowledgeable in determining circumstances when post-exposure prophylaxis is necessary.

13. "Mucous membrane" means a thin, pliable layer of tissue that lines passageways and cavities in the human body that lead to the outside, such as the mouth, gastrointestinal tract, nose, vagina, and urethra.

14. "Notarized" means signed and dated by a notary.

15. "Notary" means any individual authorized to perform the acts specified under A.R.S. § 41-313.

16. "Post-exposure prophylaxis" means treatment provided to an individual who may have been exposed to a communicable disease, which is intended to prevent infection of the individual.

17. "Significant exposure risk" has the same meaning as in A.R.S. § 36-661.

18. "Under oath or affirmation" means a sworn or affirmed statement made by a Good Samaritan to a notary under the penalty of perjury.

19. "Urgent care unit" has the same meaning as in A.A.C. R9-11-201.

B. A significant exposure risk may occur when a Good Samaritan's interaction with an individual results in:

1. A transfer of blood or body fluids from the individual onto the mucous membranes or into breaks in the skin of the Good Samaritan; or

2. A sharing of airspace between the Good Samaritan and the individual.

C. If a Good Samaritan makes a disclosure request to the Department or a local health agency 72 hours or less after an alleged significant exposure risk, the disclosure request shall include:

1. The Good Samaritan's name;
2. The Good Samaritan's mailing address or e-mail address;
3. The telephone number at which the Good Samaritan may be reached during a working day;
4. A description of the accident, fire, or other life-threatening emergency, in which the Good Samaritan rendered emergency care or assistance;
5. A description of the:
    a. Emergency care or assistance rendered by the Good Samaritan at the accident, fire, or other life-threatening emergency; and
    b. Circumstances that the Good Samaritan believes constitute a significant exposure risk;
6. If known, the name of the assisted person;
7. If known, the date of birth of the assisted person; and
8. Any additional information that may identify the assisted person.

D. If a Good Samaritan makes a disclosure request to the Department or a local health agency more than 72 hours after an alleged significant exposure risk, the disclosure request shall include:

1. A statement in writing that the Good Samaritan is requesting communicable disease-related information for an assisted person as allowed under A.R.S. § 36-664(E);
2. Documentation concerning the accident, fire, or other life-threatening emergency in which the Good Samaritan rendered emergency care or assistance; and
3. A notarized affidavit that contains:
    a. The information specified in subsections (C)(1) through (8);
    b. A statement that the Good Samaritan understands that the Good Samaritan may seek medical consultation to determine whether post-exposure prophylaxis for a communicable disease is needed;
    c. A statement that the Good Samaritan certifies that the declarations contained within the affidavit are truthful to the best of the Good Samaritan's knowledge; and
    d. The Good Samaritan's signature.

E. Within two working days after the Department or a local health agency receives a disclosure request from a Good Samaritan, the Designated Officer shall:

1. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan and communicable disease-related information is available for the assisted person:
    a. Attempt to contact the Good Samaritan by telephone and provide the Good Samaritan with the communicable disease-related information:

i. For the assisted person;
ii. Pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person; and
iii. Without revealing the assisted person's name;

b. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that disclosure of communicable disease-related information for one communicable disease does not rule out the possibility that the Good Samaritan was exposed to other communicable diseases about which information is not available to the Designated Officer;

c. Attempt to contact the Good Samaritan by telephone and provide to the Good Samaritan information concerning the agent causing the communicable disease for which the Designated Officer is disclosing communicable disease-related information, including:
i. A description of the disease or syndrome caused by the agent, including its symptoms;
ii. A description of how the agent is transmitted to others;
iii. The average window period for the agent;
iv. An explanation that exposure to an individual with a communicable disease does not mean that infection has occurred or will occur;
v. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
vi. That it is necessary to notify others that they may be or may have been exposed to the agent through interaction with the Good Samaritan; and
vii. The availability of assistance from the Department, local health agencies, or other resources; and

d. Send to the Good Samaritan in writing:
i. The information specified in subsection (E)(1)(a);
ii. The notification specified in subsection (E)(1)(b);
iii. The information specified in subsection (E)(1)(c); and
iv. A statement that the confidentiality of the disclosed communicable disease-related information is protected by A.R.S. §§ 36-664(G) and 36-666(A)(2);

2. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) indicates a significant exposure risk to the Good Samaritan, but the Designated Officer is unable to provide communicable disease-related information for the assisted person:

a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that either:
    i. Communicable disease-related information, pertaining to the specific communicable disease or diseases that may be transmitted through the interaction between the Good Samaritan and the assisted person, is not available to the Designated Officer; or
    ii. The Designated Officer is unable to identify the assisted person from the information provided in the Good Samaritan's disclosure request, as specified in subsection (C) or (D);
b. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that:
    i. The Good Samaritan's interaction with the assisted person may pose a significant exposure risk to the Good Samaritan; and
    ii. The Good Samaritan may seek medical consultation on the need for post-exposure prophylaxis; and
c. Send to the Good Samaritan in writing the notifications specified in subsections (E)(2)(a) and (b); and

3. If the Designated Officer determines that the information provided as specified in subsection (C) or (D) does not indicate a significant exposure risk to the Good Samaritan:
    a. Attempt to contact the Good Samaritan by telephone and notify the Good Samaritan that the Designated Officer will not disclose any available communicable disease-related information for the assisted person; and
    b. Send to the Good Samaritan in writing:
        i. The notification specified in subsection (E)(3)(a);
        ii. A statement that the Designated Officer's decision not to disclose communicable disease-related information to the Good Samaritan is based on A.R.S. § 36-664(E) and this Section;
        iii. The Designated Officer's reasons for not disclosing communicable disease-related information to the Good Samaritan; and
        iv. A statement that the Good Samaritan has the right to obtain a hearing as specified in A.R.S. § 41-1092.03(B).

Statutory Authority for 9 A.A.C. 6, Article 1

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. <u>Powers and duties of director; compensation of personnel; rules; definitions</u>

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.

36-664. Confidentiality; exceptions

A. A person who obtains communicable disease related information in the course of providing a health service or obtains that information from a health care provider pursuant to an authorization shall not disclose or be compelled to disclose that information except as authorized by state or federal law, including the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 160 and part 164, subpart E), or pursuant to the following:

1. The protected person or, if the protected person lacks capacity to consent, the protected person's health care decision maker.

2. A health care provider or first responder who has had an occupational significant exposure risk to the protected person's blood or bodily fluid if the health care provider or first responder provides a written request that documents the occurrence and information regarding the nature of the occupational significant exposure risk and the report is reviewed and confirmed by a health care provider who is both licensed pursuant to title 32, chapter 13, 14, 15 or 17 and competent to determine a significant exposure risk. A health care provider who releases communicable disease information pursuant to this paragraph shall provide education and counseling to the person who has had the occupational significant exposure risk.

3. The department or a local health department for purposes of notifying a Good Samaritan pursuant to subsection E of this section.

4. An agent or employee of a health facility or health care provider to provide health services to the protected person or the protected person's child or for billing or reimbursement for health services.

5. A health facility or health care provider, in relation to procuring, processing, distributing or using a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical education, research or therapy or for transplantation to another person.

6. A health facility or health care provider, or an organization, committee or individual designated by the health facility or health care provider, that is engaged in the review of professional practices, including the review of the quality, utilization or necessity of medical care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility or by a health care provider.

7. A private entity that accredits the health facility or health care provider and with whom the health facility or health care provider has an agreement requiring the agency to protect the confidentiality of patient information.

8. A federal, state, county or local health officer if disclosure is mandated by federal or state law.

9. A federal, state or local government agency authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this article or as otherwise allowed by law.

10. An authorized employee or agent of a federal, state or local government agency that supervises or monitors the health care provider or health facility or administers the program under which the health service is provided. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency, has access to records relating to the care or treatment of the protected person.

11. A person, health care provider or health facility to which disclosure is ordered by a court or administrative body pursuant to section 36-665.

12. The industrial commission of Arizona or parties to an industrial commission of Arizona claim pursuant to section 23-908, subsection D and section 23-1043.02.

13. Insurance entities pursuant to section 20-448.01 and third-party payors or the payors' contractors.

14. Any person or entity as authorized by the patient or the patient's health care decision maker.

15. A person or entity as required by federal law.

16. The legal representative of the entity holding the information in order to secure legal advice.

17. A person or entity for research only if the research is conducted pursuant to applicable federal or state laws and regulations governing research.

18. A person or entity that provides services to the patient's health care provider, as defined in section 12-2291, and with whom the health care provider has a business associate agreement that requires the person or entity to protect the confidentiality of patient information as required by the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 164, subpart E).

19. A county medical examiner or an alternate medical examiner directing an investigation into the circumstances surrounding a death pursuant to section 11-593.

B. At the request of the department of child safety or the department of economic security and in conjunction with the placement of children in foster care or for adoption or court-ordered placement, a health care provider shall disclose communicable disease information, including HIV-related information, to the department of child safety or the department of economic security.

C. A state, county or local health department or officer may disclose communicable disease related information if the disclosure is any of the following:

1. Specifically authorized or required by federal or state law.

2. Made pursuant to an authorization signed by the protected person or the protected person's health care decision maker.

3. Made to a contact of the protected person. The disclosure shall be made without identifying the protected person.

4. Made for the purposes of research as authorized by state and federal law.

5. Made to a nonprofit health information organization as defined in section 36-3801 that is designated by the department as this state's official health information exchange organization.

D. The director may authorize the release of information that identifies the protected person to the national center for health statistics of the United States public health service for the purposes of conducting a search of the national death index.

E. The department or a local health department shall disclose communicable disease related information to a Good Samaritan who submits a request to the department or the local health department. The request shall document the occurrence of the accident, fire or other life-threatening emergency and shall include information regarding the nature of the significant exposure risk. The

department shall adopt rules that prescribe standards of significant exposure risk based on the best available medical evidence. The department shall adopt rules that establish procedures for processing requests from Good Samaritans pursuant to this subsection. The rules shall provide that the disclosure to the Good Samaritan not reveal the protected person's name and be accompanied by a written statement that warns the Good Samaritan that the confidentiality of the information is protected by state law.

F. An authorization to release communicable disease related information shall be signed by the protected person or, if the protected person lacks capacity to consent, the protected person's health care decision maker. An authorization shall be dated and shall specify to whom disclosure is authorized, the purpose for disclosure and the time period during which the release is effective. A general authorization for the release of medical or other information, including communicable disease related information, is not an authorization for the release of HIV-related information unless the authorization specifically indicates its purpose as an authorization for the release of confidential HIV-related information and complies with the requirements of this section.

G. A person to whom communicable disease related information is disclosed pursuant to this section shall not disclose the information to another person except as authorized by this section. This subsection does not apply to the protected person or a protected person's health care decision maker.

H. This section does not prohibit the listing of communicable disease related information, including acquired immune deficiency syndrome, HIV-related illness or HIV infection, in a certificate of death, autopsy report or other related document that is prepared pursuant to law to document the cause of death or that is prepared to release a body to a funeral director. This section does not modify a law or rule relating to access to death certificates, autopsy reports or other related documents.

I. If a person in possession of HIV-related information reasonably believes that an identifiable third party is at risk of HIV infection, that person may report that risk to the department. The report shall be in writing and include the name and address of the identifiable third party and the name and address of the person making the report. The department shall contact the person at risk pursuant to rules adopted by the department. The department employee making the initial contact shall have expertise in counseling persons who have been exposed to or tested positive for HIV or acquired immune deficiency syndrome.

J. Except as otherwise provided pursuant to this article or subject to an order or search warrant issued pursuant to section 36-665, a person who receives HIV-related information in the course of providing a health service or pursuant to a release of HIV-related information shall not disclose that information to another person or legal entity or be compelled by subpoena, order, search warrant or other judicial process to disclose that information to another person or legal entity.

K. This section and sections 36-666, 36-667 and 36-668 do not apply to persons or entities that are subject to regulation under title 20.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: **March 15, 2023**

SUBJECT: **Department of Health Services**
Title 9, Chapter 6

This Five-Year-Review Report from the Department of Health Services related to rules in Title 9, Chapter 6, Article 11 regarding STD-Related Testing and Notifications.

The Department did not propose to make any changes to the rules in the last 5YRR of these rules in 2018.

Proposed Action

The Department is proposing to amend one of the rules to make it more clear, concise, and understandable. Specifically, the Department is proposing to update the term "sexually transmitted disease" or "STD" to "sexually transmitted infection" or "STI" to more accurately reflect the language used in the healthcare field. The Department indicates they plan to submit a Notice of Final Rulemaking to the Council by June 2023.

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

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

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

The Department believed that the Department and local health agencies would incur minimal costs for testing court-ordered specimens and notifying victims and possibly court-ordered subjects under A.R.S. § 13-1415 and receive a minimal benefit from the notification and identification of an STD-infected individual. The Department is unaware of any court-ordered STD-testing in the last five years. Prosecuting attorneys were also believed to incur a minimal cost and receive a minimal benefit from the addition of requirements related to A.R.S. § 13-1415 and the clarity of the requirements.

The Department anticipated that physicians and other health care providers could incur minimal costs and receive minimal benefits from specifying requirements for notification of court-ordered subjects and the Department. Court-ordered subjects, victims of sexual assault, and society, in general, were believed to receive a significant benefit from knowing the requirements for testing and notification under the new rules. The Department believes that the costs and benefits identified in the EISs are generally consistent with the actual costs and benefits of the rule.

Stakeholders include the Department, local health agencies, 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 Department has determined that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

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:

R9-6-1101 - Definitions

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

Yes, the Department indicates the rules are overall 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 to the rules.

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 permit or license.

11. Conclusion

As mentioned above, the Department is proposing to amend one of their rules to make it more clear, concise, and understandable. The Department plans to submit a Notice of Final Expedited Rulemaking to the Council by June 2023.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

January 5, 2023

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. 6, Article 11, Five-Year-Review Report for Communicable Diseases and Infestations - STD-Related Testing and Notification

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. 6, Article 11, STD-Related Testing and Notification, which is due on April 30, 2023.

The Department reviewed the rules in 9 A.A.C. 6, Article 11, 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,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services -

Communicable Diseases and Infestations

Article 11. STD-Related Testing and Notification

January 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G)

Specific Statutory Authority: A.R.S. § 36-136(I)(1)

R9-6-1104- A.R.S. §13-1415 as additional specific authority

2. The objective of each rule:

Rule	Objective
R9-6-1101	To define terms used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation.
R9-6-1102	To specify STD-related requirements for health care providers.
R9-6-1103	To specify STD-related requirements for local health agencies.
R9-6-1104	The objectives of the rule are to: a. Specify where requirements related to testing performed as a result of a court order issued under A.R.S. § 13-1210 or 32-3207 are located, b. Provide requirements for a prosecuting attorney who petitioned a court for STD-related testing under A.R.S. § 13-1415, c. Provide requirements for a person who tests a specimen as a result of a court order issued under A.R.S. § 13-1415, and d. Specify notification requirements for STD-related testing performed as a result of a court order.

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

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
R9-6-1101	The rule is clear, concise, and understandable but could be improved by updating the term "sexually transmitted disease" or "STD to "sexually transmitted infection" or "STI", to reflect the more accurate language used in the health care field. While updating the term, the spelled-out form and the acronym form can also be defined in one definition, rather than having two separate definitions. In many cases, the terms are used interchangeably with "sexually transmitted infection" or "STI." However, the terms "sexually transmitted infections" or "STI" are more scientifically accurate since not everyone with an infection develops symptoms, and there is technically no disease without symptoms. Sexually transmitted infections, or STIs, are infections that have not yet developed into diseases and can include bacteria, viruses, or parasites such as pubic lice. They are usually transmitted during sexual activities through an exchange of bodily fluids or skin-to-skin contact where the infection is active. Nonsexual activities in which bodily fluids are exchanged can also transmit STIs. For example, people who share needles can infect each other with HIV. Sexually transmitted diseases, or STDs, on the other hand, are diseases that result from STIs, and therefore suggest a more serious problem. All STDs start as infections. Pathogens enter the body and begin multiplying. When these pathogens disrupt normal body functions or damage structures in the body, they become STDs. However, some STIs may never develop into diseases. Gonorrhea infections are often asymptomatic, particularly in women but a small percentage of cases (~5%) can develop Disseminated Gonococcal Infection which is where the gonococcal bacteria invade the blood system and can lead to septic arthritis, tenosynovitis, skin lesions, or, on rare occasions, endocarditis, progressing from infection to potentially life-threatening disease. According to the American Sexual Health Association, a growing number of public health experts believe the term STD can mislead people because "disease" suggests a person has an obvious medical problem, which is not always the case. For this reason, the term "infection" is often considered more accurate. Updating the terms, "sexually transmitted disease" or "STD to "sexually transmitted infection" or "STI" will require updating other sections throughout Chapter 6 and Article 11, including the title of Article 11, to use consistent and accurate terminology.

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:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to "define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases." A.R.S. § 13-1415 specifies requirements for court-ordered sexually transmitted disease (STD)-related testing. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 11.

In 2007, there were 285 cases of primary and secondary syphilis; 256 cases of early latent syphilis; 22 cases of congenital syphilis; 5,043 cases of gonorrhea; and 24,752 cases of chlamydia reported to the Department. In 2016, there were 721 cases of primary and secondary syphilis; 488 cases of early latent syphilis; 16 cases of congenital syphilis; 10,330 cases of gonorrhea; and 34,923 cases of chlamydia reported to the Department. In 2021, there were 1,982 cases of primary and secondary syphilis; 1,476 cases of early non-primary non-secondary syphilis; 18X cases of congenital syphilis; 18,426 cases of gonorrhea; and 41,498 cases of chlamydia reported to the Department. Case counts increased for all reported STDs from 2007 to 2021: chlamydia increased by 16,746 cases (68%), gonorrhea increased by 13,383 (265%), primary and secondary syphilis increased by 1,697 (595%), early non-primary non-secondary syphilis increased by 1,220 (477%), and congenital syphilis increased by 159 (723%). The estimated average lifetime direct medical costs per case are $434 and $36 for chlamydia in women and men, respectively; $473 and $94 for gonorrhea in women and men, respectively; and $789 for syphilis in women and men. The first-year direct medical cost for congenital syphilis is $9,293, while the lifetime indirect cost per case of congenital syphilis is $71,932, mainly associated with lost productivity.

The rules in 9 A.A.C. 6, Article 11 were made by final rulemakings published in the Arizona Administrative Register (A.A.R.) at 14 A.A.R. 1502, effective April 1, 2008. An economic, small business, and consumer impact statement (EIS) was submitted to the Governor's Regulatory Review Council as part of the final rulemaking. The EIS designated annual costs/revenue changes as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost or benefit was "significant" when meaningful or important, but not readily subject to quantification.

The Department believed that the Department and local health agencies would incur minimal costs for testing court-ordered specimens and notifying victims and possibly court-ordered subjects under A.R.S. § 13-1415 and receive a minimal benefit from the notification and identification of an STD-infected individual. The Department is unaware of any court-ordered STD-testing in the last five years. Prosecuting attorneys were also believed to incur a minimal cost and receive a minimal benefit from the addition of requirements related to A.R.S. § 13-1415 and the clarity of the requirements.

Two Sections (R9-6-1102 and R9-6-1103) of the rules in 9 A.A.C. 6, Article 11 were last revised through rulemaking at 23 A.A.R. 2605, effective January 1, 2018. In this rulemaking, the Department corrected cross-

references in Chapter 6, Article 11 that was incorrect due to the renumbering in Article 3. One cross-reference was updated in R9-6-1102 and the language was simplified to directly reference the rules requiring serologic testing for syphilis according to R9-6-381. Similarly, R9-6-1103 was amended to update two cross-references related to reporting chancroid and syphilis cases to the local health agency. The Department estimates that these changes may have imposed a minimal-to-no cost on related persons, and have produced a significant benefit for individuals affected by the rules to have updated cross-references and clearer rules.

The Department anticipated that physicians and other health care providers could incur minimal costs and receive minimal benefits from specifying requirements for notification of court-ordered subjects and the Department. Court-ordered subjects, victims of sexual assault, and society, in general, were believed to receive a significant benefit from knowing the requirements for testing and notification under the new rules. The Department believes that the costs and benefits identified in the EISs are generally consistent with the actual costs and benefits of the rule.

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 2018 five-year-review report, the Department stated that the Department believed the rules were sufficient to protect public health and did not plan to amend the rules in 9 A.A.C. 6, Article 11 unless a threat to public health or safety arose that would require amending the rules. Since no such threat arose in the past five years, the Department complied with this 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. 6, Article 11 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

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. 6, Article 11.

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:

Except for the correction of cross-references in R9-6-1102 and R9-6-1103 that were effective January 1, 2018, the rules were adopted before July 29, 2010. The rules do not require the issuance of a 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 paragraph 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 paragraph 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 June 2023.

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

ARTICLE 11. STD-RELATED TESTING AND NOTIFICATION

R9-6-1101. Definitions

In this Article, unless otherwise specified:

1. "Primary syphilis" means the initial stage of syphilis infection characterized by the appearance of one or more open sores in the genital area, anus, or mouth of an infected individual.
2. "Secondary syphilis" means the stage of syphilis infection occurring after primary syphilis and characterized by a rash that does not itch, fever, swollen lymph glands, and fatigue in an infected individual.
3. "Sexually transmitted diseases" means the same as in A.R.S. § 13-1415.
4. "STD" means a sexually transmitted disease or other disease that may be transmitted through sexual contact.

R9-6-1102. Health Care Provider Requirements

When a laboratory report for a test ordered by a health care provider for a subject indicates that the subject is infected with an STD, the ordering health care provider or the ordering health care provider's designee shall:

1. Describe the test results to the subject;
2. Provide or arrange for the subject to receive the following information about the STD for which the subject was tested:
   a. A description of the disease or syndrome caused by the STD, including its symptoms;
   b. Treatment options for the STD and where treatment may be obtained;
   c. A description of how the STD is transmitted to others;
   d. A description of measures to reduce the likelihood of transmitting the STD to others and that it is necessary to continue the measures until the infection is eliminated;
   e. That it is necessary for the subject to notify individuals who may have been infected by the subject that the individuals need to be tested for the STD;
   f. The availability of assistance from local health agencies or other resources; and
   g. The confidential nature of the subject's test results;
3. Report the information required in R9-6-202 to a local health agency; and
4. If the subject is pregnant and is a syphilis case, inform the subject of the requirement that the subject obtain serologic testing for syphilis according to R9-6-381.

R9-6-1103. Local Health Agency Requirements

A. For each STD case, a local health agency shall:

1. Comply with the requirements in:
   a. R9-6-317(A)(1) and (2) for each chancroid case reported to the local health agency, and
   b. R9-6-381(A)(3)(a) through (c) for each syphilis case reported to the local health agency;
2. Offer or arrange for treatment for each STD case that seeks treatment from the local health agency for symptoms of:
   a. Chancroid,
   b. Chlamydia infection,
   c. Gonorrhea, or
   d. Syphilis;
3. Provide information about the following to each STD case that seeks treatment from the local health agency:
   a. A description of the disease or syndrome caused by the applicable STD, including its symptoms;
   b. Treatment options for the applicable STD;
   c. A description of measures to reduce the likelihood of transmitting the STD to others and that it is necessary to continue the measures until the infection is eliminated; and
   d. The confidential nature of the STD case's test results; and
4. Inform the STD case that:
   a. A chlamydia or gonorrhea case must notify each individual, with whom the chlamydia or gonorrhea case has had sexual contact within 60 days preceding the onset of chlamydia or gonorrhea symptoms up to the date the chlamydia or gonorrhea case began treatment for chlamydia or gonorrhea infection, of the need for the individual to be tested for chlamydia or gonorrhea; and
   b. The Department or local health agency will notify, as specified in subsection (B), each contact named by a chancroid or syphilis case.

B. For each contact named by a chancroid or syphilis case, the Department or a local health agency shall:

1. Notify the contact named by a chancroid or syphilis case of the contact's exposure to chancroid or syphilis and of the need for the contact to be tested for:

a. Chancroid, if the chancroid case has had sexual contact with the contact within 10 days preceding the onset of chancroid symptoms up to the date the chancroid case began treatment for chancroid infection; or
b. Syphilis, if the syphilis case has had sexual contact with the contact within:
i. 90 days preceding the onset of symptoms of primary syphilis up to the date the syphilis case began treatment for primary syphilis infection;
ii. Six months preceding the onset of symptoms of secondary syphilis up to the date the syphilis case began treatment for secondary syphilis infection; or
iii. 12 months preceding the date the syphilis case was diagnosed with syphilis if the syphilis case cannot identify when symptoms of primary or secondary syphilis began;

2. Offer or arrange for each contact named by a chancroid or syphilis case to receive testing and, if appropriate, treatment for chancroid or syphilis; and
3. Provide information to each contact named by a chancroid or syphilis case about:
a. The characteristics of the applicable STD,
b. The syndrome caused by the applicable STD,
c. Measures to reduce the likelihood of transmitting the applicable STD, and
d. The confidential nature of the contact's test results.

C. For each contact of a chlamydia or gonorrhea case who seeks treatment from a local health agency for symptoms of chlamydia or gonorrhea, the local health agency shall:
1. Offer or arrange for treatment for chlamydia or gonorrhea;
2. Provide information to each contact of a chlamydia or gonorrhea case about:
a. The characteristics of the applicable STD,
b. The syndrome caused by the applicable STD,
c. Measures to reduce the likelihood of transmitting the applicable STD, and
d. The confidential nature of the contact's test results.

R9-6-1104. Court-ordered STD-related Testing

A. A health care provider who receives the results of a test, ordered by the health care provider to detect an STD and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.

B. A health care provider who receives the results of a test, ordered by the health care provider to detect an STD and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.

C. When a court orders a test under A.R.S. § 13-1415 to detect a sexually-transmitted disease, the prosecuting attorney who petitioned the court for the order shall provide to the Department:
1. A copy of the court order, including an identifying number associated with the court order;
2. The name and address of the victim; and
3. The name and telephone number of the prosecuting attorney or the prosecuting attorney's designee.

D. A person who tests a specimen of blood or another body fluid from a subject to detect a sexually-transmitted disease as authorized by a court order issued under A.R.S. § 13-1415 shall:
1. Be a certified laboratory, as defined in A.R.S. § 36-451;
2. Use a test approved by the U.S. Food and Drug Administration for use in STD-related testing; and
3. Report the test results for each subject to the submitting entity within five working days after obtaining the test results.

E. A submitting entity that receives the results of a test to detect a sexually-transmitted disease that was performed as a result of a court order issued under A.R.S. § 13-1415 shall:
1. Notify the Department within five working days after receiving the results of the test to detect a sexually-transmitted disease;
2. Provide to the Department:
a. A written copy of the court order,
b. A written copy of the results of the test to detect a sexually-transmitted disease, and
c. The name and telephone number of the submitting entity or submitting entity's designee; and
3. Either:
a. Comply with the requirements in:
i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or
b. Provide to the Department or the local health agency in whose designated service area the subject is living:
i. The name and address of the subject;
ii. A written copy of the results of the test to detect a sexually-transmitted disease, if not provided as specified in subsection (E)(2)(b); and
iii. Notice that the submitting entity did not provide notification as specified in subsection (E)(3)(a).

F. If the Department or a local health agency is notified by a submitting entity as specified in subsection (E)(3)(b), the Department or local health agency shall comply with the requirements in:
1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.

G. When the Department receives the results of a test to detect a sexually-transmitted disease that was performed for a subject as a result of a court order issued under A.R.S. § 13-1415, the Department shall:
1. Provide to the victim:

a. A description of the results of the test to detect the sexually-transmitted disease,
b. The information specified in R9-6-802(D), and
c. A written copy of the test results for the sexually-transmitted disease; or

2. Provide to the local health agency in whose designated service area the victim is living:
   a. The name and address of the victim,
   b. A written copy of the results of the test to detect the sexually-transmitted disease, and
   c. Notice that the Department did not provide notification as specified in subsection (G)(1).

H. If a local health agency is notified by the Department as specified in subsection (G)(2), the local health agency shall:

1. Provide to the victim:
   a. A description of the results of the test to detect the sexually-transmitted disease;
   b. The information specified in R9-6-802(D); and
   c. A written copy of the test results for the sexually-transmitted disease; or
2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect the sexually-transmitted disease.

Statutory Authority

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.

32-3207. Health professionals disease hazard; testing; petition; definition

A. A health professional may petition the court to allow for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.

B. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that significant exposure occurred between the patient or deceased person and the health professional, the court shall order that either:

1. The person who transferred blood or bodily fluids onto the health professional provide two specimens of blood for testing.

2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

C. On written notice from the employer of the health professional, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency or entity for testing only after the court issues its order pursuant to subsection B. If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

D. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, the health professional named in the petition and the health professional's employer. If the person is incarcerated or detained, the notice shall also be provided to the chief medical officer of the facility in which the person is incarcerated or detained.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or bodily fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of blood borne or bodily fluid carried diseases.

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.

36-3207. Health care directives; effect on insurance and medical coverage

A. A person shall not require a person to execute or prohibit a person from executing a health care directive as a condition for providing health care services or insurance.

B. An insurer shall not refuse to pay for goods or services under a patient's insurance policy because the decision to use the goods or services was made by the patient's surrogate.

C. If a patient's death follows the withholding or withdrawing of any medical care pursuant to a surrogate's decision not expressly precluded by the patient's health care directive, that death does not constitute a homicide or a suicide and does not impair or invalidate an insurance policy, an annuity or any other contract that is conditioned on the life or death of the patient regardless of any terms of that contract.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 12

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: **March 15, 2023**

SUBJECT: **Department of Health Services**
Title 9, Chapter 6

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 6, Article 12 regarding Tuberculosis Control.

In the last 5YRR of these rules, the Department proposed to amend the rules through expedited rulemaking. The Department completed the proposed course of action through expedited rulemaking which became effective January 8, 2019.

Proposed Action

The Department indicates the rules are overall clear, concise, understandable, effective and consistent with other rules and statutes, and is not proposing any changes to the rules.

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

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

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

The rules aim to establish reasonable and necessary measures to detect, report, and treat persons afflicted with tuberculosis, specifically inmates in correctional facilities. Changes to the rules include clarifying requirement verbiage; removing outdated requirements; defining terms; increasing reporting requirements, including the addition of a deadline; and requiring new procedures to screen and treat tuberculosis infected inmates. In conclusion, the Department believes that, although costs have risen since 2004, the costs and benefits identified in the 2004 EIS are generally consistent with the actual costs and benefits of the rule.

Stakeholders were identified as the Department, correctional facilities, inmates and staff of correctional facilities, the public, and local health agencies.

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 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

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.

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

Yes, the Department indicates the rules are overall 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 to the rules.

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 permit or license.

11. Conclusion

As mentioned above, the Department indicates the rules are overall clear, concise, understandable, effective, and consistent with other rules and statutes. The Department is not proposing any changes to the rules unless a threat to public or safety arises.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

January 24, 2023

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. 6, Article 12, Five-Year-Review Report for Communicable Diseases and Infestations - Tuberculosis Control

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. 6, Article 12, Tuberculosis Control, which is due on April 28, 2023.

The Department reviewed the rules in 9 A.A.C. 6, Article 12, 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,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services -

Communicable Diseases and Infestations

Article 12. Tuberculosis Control

January 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-136(I)(1) and 36-721

2. The objective of each rule:

Rule	Objective
R9-6-1201	To enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-6-1202	To tuberculosis-related reporting requirements for local health agencies.
R9-6-1203	To specify requirements in correctional facilities for: a. Tuberculosis symptom screening for inmates, b. Medical treatment, including isolation for afflicted inmates, and c. Tuberculosis-related reporting to the local health agency.
R9-6-1204	To specify standards of medical care for health care providers who are treating afflicted persons.

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

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

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:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to "define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases." A.R.S. § 36-721 requires the Director to make rules to prescribe reasonable and necessary measures regarding standards of medical care for persons afflicted with tuberculosis. A.R.S. § 36-721 further requires the submission of tuberculosis reports and statistics from counties. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 12.

In 2016, there were 188 cases of tuberculosis (TB) reported to the Department. This is a case rate of 2.8 (number of cases per 100,000 population) in Arizona as compared to a case rate of 2.9 in the United States. In 2021, there were 129 cases of TB reported to the Department. This is a case rate of 2.3 in Arizona as compared to a case rate of 2.6 in the United States. Overall, the case rates in Arizona from 2007 through 2021 had an overall downward trend. A formal analysis of the trend has not been conducted, but historically it is due to improved TB control and prevention activities. The current estimated treatment costs for an afflicted person, including basic lab tests; X-rays; medication for treatment; and costs related to time and mileage for medical, social work, case management, and communicable disease investigator personnel is $18,000 for a patient treated for six to nine months on Rifampin-based regimen with no drug resistance. A new regimen for the treatment of multidrug resistant TB, including extensively drug resistant TB, known as BPaL is now available in the United States. A

cost analysis is not yet available, however, prior treatment regimens cost $160,000 for a patient treated for 20 to 26 months with multi-drug resistance and $513,000 for a patient treated for 32 months with extensively drug resistant TB. BPaL treatment significantly shortens treatment to 6 to 9 months but requires more intensive monitoring and more expensive medications than treatment for drug susceptible TB. In 2019 in Arizona, the last year for which completion of treatment data is available, approximately 59 percent of afflicted persons were treated for a period of six months or less, 32 percent were treated for a period of seven to nine months, and 9 percent were treated for longer than nine months. It is uncommon for a person to have multi-drug resistance. Over the past five years, Arizona has reported anywhere from one percent (6 of 814) of cases that have multi-drug resistance and zero cases that have extensively-drug resistant TB.

Although the rules in 9 A.A.C. 6, Article 12 were made by final rulemaking published in the *Arizona Administrative Register* (A.A.R.) at 13 A.A.R. 4106, effective January 5, 2008, the rulemaking was a recodification of the rules from 9 A.A.C. Article 6, through which the content of the rules was unchanged; therefore, an economic, small business, and consumer impact statement (EIS) was not submitted to GRRC as part of this final rulemaking.

Four rules (R9-6-1201, R9-6-1202, R9-6-1203, R9-6-1204) were last revised through final expedited rulemaking at 25 A.A.R. 255, effective January 8, 2019. As part of the 2018 five-year-review report for 9 A.A.C. 6, Article 12, the Department identified several minor issues that affect the clarity of the rules. As stated in the 2018 five-year-review report, the Department amended R9-6-1202 to clarify what is required of a local health agency when reporting to the Department. The rules in R9-6-1203 were amended to clarify the requirements for when an inmate has a positive result on a repeat test for tuberculosis are also unclear, which may lead to cases being inadequately diagnosed and treated. In Article 12, this rulemaking updated cross-references and the formatting of the rules, while also removing references to outdated forms and obsolete medical guidelines that did not adequately protect the health and safety of tuberculosis afflicted persons. As estimated, the Department believes the rulemaking did not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but implement a course of action proposed in the 2018 five-year-review report. The Department believes that these rule changes may have provided a significant benefit to persons affected by the rules.

The rules were substantially revised in 2004 to clarify rules, remove provisions that were unnecessary because of statutory changes, and make the rules more effective in detecting, preventing, and controlling TB by adopting control measures for correctional facilities. An EIS was submitted to GRRC as part of the 2004 final rulemaking. The EIS designated annual costs/revenue changes as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost or benefit was “significant” when meaningful or important, but not readily subject to quantification.

As stated in the 2004 EIS, the Department believed:

- Defining terms previously undefined would not result in increased costs and a minimal benefit to the Department, a local health agency (LHA), an administrator of a correctional facility (CF), and the public by making the rules clearer.
- Removing provisions addressed in A.R.S. Title 36, Chapter 6, Article 6, would not result in increased costs and a minimal benefit to the Department, a LHA, and the public by eliminating rule language that is inconsistent with state statutes.
- Adding a deadline for a LHA to report TB information would result in a minimal burden for a LHA because of the inclusion of the deadline, and a significant benefit to the Department, a LHA, and the public because it would enable the Department to receive timely information, thereby making the Department's response more effective.
- Requiring a LHA to complete and submit a Center for Disease Control and Prevention (CDC) form for each person with infectious active TB, suspect case, or contact with an individual with infectious active TB would result in a minimal-to-moderate burden for a LHA because the form is lengthy and requires information gathered in an epidemiologic investigation. This provision would result in a significant benefit to the Department because it would ensure that the Department has the information needed to report to the CDC, which can lead to the identification of the source of illness and prevention of further transmission of the disease.
- The following would result in a substantial benefit for the Department, a LHA, a CF, and the public, by controlling the spread of TB within a CF and, thereby, reducing the costs associated with treatment for TB. The Department estimated the cost of treating one individual with TB averages between $10,000 and $20,000:
    - Requiring a symptom screening for each new inmate entering a CF. This requirement would result in a moderate-to-substantial burden to a CF, depending on the number of new inmates, due to the time spent performing the screening. The Department estimated that the annual cost to the Arizona Department of Corrections (DOC) would be approximately $8,740 - $17,480; for county jails, approximately $98,967 - $197,933; and for Arizona's three private prisons, approximately $1,250 - $2,500.
    - Requiring the placement of an inmate with symptoms suggestive of TB in airborne infection isolation or that the inmate wears a surgical mask at all times and has minimal exposure to the general inmate population. This requirement would result in a minimal burden for a CF due to the cost of a surgical mask and placement of the inmate in an appropriate environment.
    - Requiring, within 24 hours after screening, an inmate with symptoms suggestive of TB who was not immediately placed in airborne infection isolation to be given a medical evaluation for active TB or transported to a health care institution to be placed in airborne infection isolation, and that each inmate with symptoms suggestive of TB be given a medical evaluation for TB before being released from airborne infection isolation or permitted to stop wearing a mask and released from the

environment where exposure to the general inmate population is minimal. This requirement would result in a minimal-to-moderate burden to a CF. The costs for a CF were identified as being for the medical evaluation or the cost of approximately $3,000 - $5,000 for each inmate to be transported and treated at a health care institution.

- Requiring a TB test within seven days after in-processing an inmate who does not have a documented history of a positive TB test and has not received a TB test within the previous 12 months. This requirement would result in a substantial burden to a CF due to the time spent performing the test and the cost of testing. The Department estimated that the annual cost to the DOC would be approximately $72,892 - $102,083; for county jails, approximately $825,381 - $1,155,929; and for Arizona's three private prisons, approximately $10,425 - $14,600.
- Requiring each inmate with active TB to receive medical treatment and be placed in airborne infection isolation until no longer infectious. This requirement would result in a moderate-to-substantial burden to a CF for each inmate who receives medical treatment and a minimal-to-moderate impact for each inmate who is placed in airborne infection isolation. The cost of placing an inmate in airborne infection isolation would be minimal if the CF had an area on-site, but moderate if the CF had to transport the inmate to a health care institution for airborne infection isolation.

- The following would result in a significant benefit for the Department, a LHA, a CF, and the public by controlling the spread of TB within a CF and subsequent transmission upon release. There would be a substantial benefit for each case prevented due to the savings in costs associated with treating one individual with active TB. The Department estimated the cost of treating one individual with TB averages between $10,000 and $20,000:
  - Requiring a chest X-ray and medical evaluation for each inmate with a positive TB test or with a documented history of a positive result, to be completed within 14 days of in-processing. This requirement would result in a substantial burden to CF's due to the cost of the chest X-ray and medical evaluation. The Department estimated that the annual cost to the DOC would be approximately $244,720 - $305,900; for county jails, approximately $2,771,090-$3,463,810; and for Arizona's three private prisons, approximately $35,000-$43,750.
  - Requiring a chest X-ray and medical evaluation within seven days of in-processing for each inmate who was HIV positive. This requirement would result in a moderate-to-substantial burden to CF's due to the cost of the X-ray and evaluation. The Department estimated that the annual cost to the DOC would be approximately $18,200 - $36,680; for county jails, approximately $207,830-415,660; and for Arizona's three private prisons, approximately $2,660-$5,250.
  - Requiring repeat TB testing after 12 months of incarceration and every 12 months thereafter. This requirement would result in a moderate-to-substantial burden to CF's due to the time spent performing the tests and the cost of the testing supplies. The Department estimated that the annual

cost to the DOC would be approximately $130,417 - $182,646; for county jails, approximately $59,956-$83,968; and for Arizona's three private prisons, approximately $10,425-$14,600.

- Exempting CF's from the requirements mentioned above (screening, testing, X-ray, medical evaluation, treatment, and isolation) for each CF that does not house an inmate for longer than 13 days and for inmates who are incarcerated for 13 or fewer days, would not result in any burden to the CF and a moderate-to-substantial benefit for each CF because of the cost savings.
- Requiring a CF administrator to notify the LHA before releasing a case or suspect case, unless prior notification would cause security concerns, in which case the rule requires notification after release, would result in a minimal burden to CF's because of the time spent providing notification. This provision would result in a substantial benefit for the Department, LHA's, and the public because notification should enable the LHA to provide evaluation and treatment, thereby preventing the transmission of TB to the public. The Department estimated the total cost of treating one individual averages $10,000-$20,000.
- Requiring a CF administrator to provide a case, suspect case, or inmate being treated for latent TB, the name and address of the LHA before release would result in a minimal burden to the CF's for the time spent providing the information. This provision would result in a substantial benefit for the Department, LHA's, and the public because it would enable the inmate to contact the LHA for treatment upon release and prevent transmission.
- Requiring a health care provider (HCP) who is caring for an afflicted person to comply with American Thoracic Society/CDC/Infectious Disease Society of America (ATS/CDC/IDSA) guidelines unless the HCP believes a deviation is necessary, would result in no-burden-to- minimal-burden because the guidelines reflected the current standard of care. This provision would result in a significant benefit to the Department, LHA's, and the public because it helps to ensure that persons will be treated appropriately and in a significant benefit to the Department because it satisfied the mandate of A.R.S. § 36-721(2).
- Requiring an HCP who is caring for an afflicted person to explain to the Department or an LHA, upon request, any deviation from ATS/CDC/IDSA guidelines would result in a minimal burden for an HCP and a substantial benefit for the Department, LHA's and the public by allowing a determination of whether the treatment provided is appropriate and intervention if the treatment is not appropriate. Each case prevented results in a substantial benefit.

Although costs have risen since 2004, the Department believes that the costs and benefits identified in the 2004 EIS are generally consistent with the actual costs and benefits of the rule.

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 2018 five-year-review report, the Department planned to amend the rules 9 A.A.C. 6, Article 12 by

expedited rulemaking to address issues described in the five-year-review report. The Department completed this course of action through expedited rulemaking at 25 A.A.R. 255, effective January 8, 2019.

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. 6, Article 12 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

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. 6, Article 12.

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:

Except for the correction of a cross-reference in R9-6-1202 that was effective January 1, 2018, the rules were adopted before July 29, 2010. The rules do not require the issuance of a 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.

The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 6, Article 12 unless a threat to public health or safety arises that would require amending the rules.

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

ARTICLE 12. TUBERCULOSIS CONTROL

R9-6-1201. Definitions

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

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

R9-6-1202. Local Health Agency Reporting Requirements

A local health agency shall report to the Department:

1. Regarding each individual in its jurisdiction who:
   a. Has been diagnosed with active tuberculosis,
   b. Is suspected of having active tuberculosis, or
   c. Is believed to have been exposed to an individual with infectious active tuberculosis;
2. According to R9-6-206:
   a. After receiving information according to R9-6-202; and
   b. After conducting an epidemiologic investigation of a case, suspect case, or contact;
3. Within 30 days after receiving the information needed to complete an initial summary for a case of active tuberculosis, in a Department-provided format, containing:
   a. Demographic information about the case,
   b. Information specific to the case's diagnosis of active tuberculosis,
   c. Information about the case's risk factors for tuberculosis, and
   d. Information specific to the treatment being provided to the case;
4. As applicable, within 30 days after receiving the information needed to complete a summary of laboratory test results for a case of active tuberculosis, in a Department-provided format, including:
   a. The results from the analysis of the agent causing tuberculosis in the case, and
   b. The drug sensitivity pattern of the agent causing tuberculosis in the case;
5. Within 30 days after determining the final disposition of a case or, except for a case still receiving treatment, two years after the case's initial diagnosis of active tuberculosis, whichever is earlier, in a Department-provided format, including:
   a. Whether the case:
      i. Completed treatment, including confirmation of the case's freedom from active tuberculosis;
      ii. Refused treatment;
      iii. Was lost to follow-up before completing treatment;
      iv. Left the jurisdiction of the local health agency before completing treatment; or
      v. Died;
   b. If applicable, the method by which the local health agency has knowledge of completion of treatment;
   c. If the period of treatment was longer than 12 months, the reason for the extended treatment; and
   d. A description of each course or method of treatment provided to the case, including the date each treatment was initiated.

R9-6-1203. Tuberculosis Control in Correctional Facilities

A. An administrator of a correctional facility shall ensure that:

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

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

C. An administrator of a correctional facility, either personally or through a representative, shall:
1. Unless unable to provide prior notification because of security concerns, notify the local health agency at least one working day before releasing a tuberculosis case or suspect case;
2. If unable to provide prior notification because of security concerns, notify the local health agency within 24 hours after releasing a tuberculosis case or suspect case;
3. Provide to a local health agency, within three working days after the local health agency's request, the information required by the local health agency to comply with R9-6-1202(5); and
4. Provide a tuberculosis case or suspect case or an inmate being treated for latent tuberculosis infection the name and address of the local health agency before the case, suspect case, or inmate is released.

R9-6-1204. Standards of Medical Care

A. Unless a health care provider believes, based on the health care provider's professional judgment, that deviation is medically necessary, a health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in the Official American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America Clinical Practice Guidelines: Treatment of Drug-Susceptible Tuberculosis (October 2016), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 25 Broadway, New York, NY 10004 or at www.atsjournals.org.

B. If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis specified in subsection (A), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation.

C. If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis specified in subsection (A) is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).

Statutory Authority

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.

32-3207. Health professionals disease hazard; testing; petition; definition

A. A health professional may petition the court to allow for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.

B. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that significant exposure occurred between the patient or deceased person and the health professional, the court shall order that either:

1. The person who transferred blood or bodily fluids onto the health professional provide two specimens of blood for testing.

2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

C. On written notice from the employer of the health professional, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency or entity for testing only after the court issues its order pursuant to subsection B. If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

D. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, the health professional named in the petition and the health professional's employer. If the person is incarcerated or detained, the notice shall also be provided to the chief medical officer of the facility in which the person is incarcerated or detained.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or bodily fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of blood borne or bodily fluid carried diseases.

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.

36-3207. Health care directives; effect on insurance and medical coverage

A. A person shall not require a person to execute or prohibit a person from executing a health care directive as a condition for providing health care services or insurance.

B. An insurer shall not refuse to pay for goods or services under a patient's insurance policy because the decision to use the goods or services was made by the patient's surrogate.

C. If a patient's death follows the withholding or withdrawing of any medical care pursuant to a surrogate's decision not expressly precluded by the patient's health care directive, that death does not constitute a homicide or a suicide and does not impair or invalidate an insurance policy, an annuity or any other contract that is conditioned on the life or death of the patient regardless of any terms of that contract.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: **Apr 4, 2023**

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

FROM: Council Staff

DATE: **March 6, 2023**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 4

Summary

This five-year review report from the Arizona Department of Health Services (Department) covers twenty-seven (27) rules in A.A.C. Title 9, Chapter 10, Article 4 associated with nursing care institutions. The Department is required to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. It also allows for the classification and sub-classification of health care institutions according to character, size, range of services provided, duration of care, and standard of care required for the purposes of licensure.

Proposed Action

The rules were revised in their entirety in 2013 and have subsequently been revised in five additional rulemakings. The Department proposes to amend the rules in Article 4 to comply with 2022 statutory changes and to address the other items mentioned in this report. These described changes will improve the effectiveness of the rules, and the health and safety of residents receiving care from a nursing care institution. The Department plans to submit a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by December 2023.

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

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 establish minimum health and safety standards for nursing care institutions. Changes in the rules' definitions and wording, for the sake of clarification, resulted in minimal or no economic impact and reduced the burden on nursing care institutions. Changes to the rules' requirements resulted in significant benefit to personnel members of nursing care institutions by making it easier to understand and comply to the rules. The Department believes that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the anticipated costs and benefits.

Stakeholders are identified as the Arizona Department of Health Services, Arizona nursing care institutions, residents and their families, 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?**

According to the Department, any failure for a nursing care institution to meet the minimum requirements prescribed by rule poses a threat to the health and safety of residents and vulnerable individuals seeking care in nursing care institutions. Thus, the probable benefits of the rules outweigh the probable costs. Furthermore, the Department believes the rules 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?**

The Department indicates that they have not received any written criticisms of the rules in the last five years.

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

The Department states that the rules are generally clear, concise, and understandable, excluding punctuation or grammatical errors, with the following exceptions:

R9-10-402: clarity could be improved if subsection (2) were revised to acknowledge that more than "information" is required in R9-10-116(B)(2).

R9-10-406: clarity could be improved if the typographical and grammatical errors in subsections (F)(3)(g) and (H) were corrected.

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

The Department states that the rules are not consistent with other rules and statutes and identifies the following three rules:

R9-10-403: subsection (C)(1)(r) should be clarified to ensure compliance with A.R.S. §§ 36-407.02, 6-420.01, and 36-420.

R9-10-406: the rule should be revised to ensure compliance with A.R.S. § 36-420.01 and subsection (F)(3) should be revised to include documentation of compliance with requirements.

R9-10-410: subsection (C) should be revised to ensure compliance with A.R.S. § 36-407.02.

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

The Department states the rules are generally effective in achieving its objectives with the following exceptions:

R9-10-411: This rule could be improved by clarifying that any action taken by a personnel member to comply with A.R.S. § 36-420 should be documented in a resident's medical record

R9-10-423: This rule could be improved by updating the meal and snack guidelines from 2010 to the most recent dietary guidelines

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

The Department states that 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?**

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?**

A general permit is not applicable and therefore not used as these rules prohibits a person from establishing, conducting, or maintaining "a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining."

11. **Conclusion**

As mentioned above, the Department believes that the rules are generally working well and accomplishing their intended purpose; they are generally clear, concise, and understandable

and effective in achieving their objective. The Department plans on submitting a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by December 2023. For these reasons, Council staff believe the Board has submitted an adequate report and recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

January 30, 2023

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. 10, Article 4, Five-Year-Review Report for Nursing Care Institutions

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 10, Article 4, which is due on or before February 28, 2023.

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,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services

Health Care Institutions: Licensing

Article 4. Nursing Care Institutions

January 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-132(A)(17), and 36-136(G)

Specific Statutory Authority: A.R.S. § 36-405

R9-10-402 - A.R.S. § 36-422 as additional specific authority

R9-10-403 - A.R.S. §§ 36-407.02, 36-411, 36-420, 36-420.01, and 36-446.01 as additional specific authority

R9-10-406 - A.R.S. §§ 36-411 and 36-420.01as additional specific authority

R9-10-423 - A.R.S. §§ 36-411 and 36-413 as additional specific authority

R9-10-427 - A.R.S. § 36-425.02 as additional specific authority

2. The objective of each rule:

Rule	Objective
R9-10-401	To define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-10-402	To specify license application requirements, in addition to those in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, that are specific to nursing care institutions.
R9-10-403	To establish minimum requirements for a nursing care institution's governing authority and administrative office.
R9-10-404	To establish minimum requirements for a nursing care institution's quality management program.
R9-10-405	To establish minimum requirements for services provided by a person who contracts with the licensee to provide services to ensure that the contractor complies with applicable requirements.
R9-10-406	To establish minimum standards for personnel.
R9-10-407	To establish minimum requirements for an individual's admission to a nursing care institution.
R9-10-408	To establish minimum requirements for a resident's transfer or discharge from a nursing care institution.
R9-10-409	To establish minimum requirements for transport to ensure that a resident's health and safety are not compromised as a result of a transport.

R9-10-410	To establish minimum standards for resident rights.
R9-10-411	To establish minimum requirements for residents' medical records.
R9-10-412	To establish minimum requirements for nursing services in a nursing care institution.
R9-10-413	To establish minimum requirements for medical services in a nursing care institution.
R9-10-414	To establish minimum requirements for conducting a comprehensive assessment of a resident and developing a care plan for the resident.
R9-10-415	To establish minimum requirements for providing behavioral health services in a nursing care institution.
R9-10-416	To establish minimum requirements for providing clinical laboratory services on a nursing care institution's premises.
R9-10-417	To establish minimum requirements for dialysis services provided on a nursing care institution's premises.
R9-10-418	To establish minimum requirements for radiology services and diagnostic imaging services provided on a nursing care institution's premises.
R9-10-419	To establish minimum requirements for respiratory care services provided on a nursing care institution's premises.
R9-10-420	To establish minimum requirements for rehabilitation services provided on a nursing care institution's premises.
R9-10-421	To establish minimum requirements for medication services provided by a nursing care institution.
R9-10-422	To establish minimum requirements for infection control in a nursing care institution.
R9-10-423	To establish minimum requirements for providing food services and for the use of nutrition and feeding assistants by a nursing care institution.
R9-10-424	To establish minimum requirements for a disaster plan, evacuation drills, fir inspections, and other safety-related requirements in a nursing care institution.
R9-10-425	To establish minimum requirements for a nursing care institution's environmental services, storage of materials that could be dangerous to a resident's health or safety, smoking areas, and safety of a resident in a pool area.
R9-10-426	To establish requirements for a nursing care institution's physical plant.
R9-10-427	To establish a quality rating for nursing care institutions based on nursing services, resident rights, administration, environment and infection control, and food services.

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**
R9-10-411	The rule is effective but could be improved by clarifying that any action taken by a personnel member to comply with A.R.S. § 36-420 should be documented in a resident's medical record.
R9-10-423	The rule is effective but could be improved by updating the meal and snack guidelines from 2010 to the most recent dietary guidelines for 2015–2020 found at https://health.gov/sites/default/files/2019-09/2015-2020_Dietary_Guidelines.pdf.

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
R9-10-403	Although the rule is consistent with state and federal statutes and rules, subsection (C)(1)(r) may need to be clarified to ensure compliance with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 179. Similarly, the rule may need to be clarified to ensure compliance with requirements in A.R.S. § 36-420.01. In addition, the rule may need to be revised to ensure compliance with the requirements in A.R.S. § 36-420.
R9-10-406	The rule may need to be revised to ensure compliance with A.R.S. § 36-420.01. In addition, subsection (F)(3) should be revised to include documentation of compliance with requirements in A.R.S. § 36-420.01.
R9-10-410	Although the rule is consistent with state and federal statutes and rules, subsection (C) may need to be revised to ensure compliance with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 179.

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
Multiple	Several rules contain minor punctuation or grammatical errors that do not affect the meaning of the rule or prevent the rule from being clear, concise, and understandable.
R9-10-402	The rule is clear, concise and understandable, but the clarity could be improved if subsection (2) were revised to acknowledge that more than "information" is required in R9-10-116(B)(2).
R9-10-406	The rule is clear, concise, and understandable, but the clarity could be improved if the typographical and grammatical errors in subsections (F)(3)(g) and (H) were corrected.

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:

Arizona Revised Statutes (A.R.S.) § 36-405(A) requires the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. It further requires that the standards and requirements relate to the construction; equipment; sanitation; staffing for medical, nursing, and personal care services; and record keeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care. A.R.S. § 36-405(B)(1) allows for the classification and sub-classification of health care institutions according to character, size, range of services provided, duration of care, and standard of care required for the purposes of licensure. The Department has adopted rules for nursing care institutions in 9 A.A.C. 10, Article 4.

Presently, there are 144 licensed a nursing care institutions in Arizona. The Department's Bureau of Long Term Care Licensing, which licenses Arizona's nursing care institutions, receives approximately 75% of its budget from the federal Centers for Medicare and Medicaid Services to inspect and certify nursing care institutions for Medicare. All of Arizona's nursing care institutions are licensed by the Department, and 98% meet federal Medicare requirements, are Medicare-certified through the Department, and receive federal funding. In the past year, the Department has received approximately 5,277 complaints or self-reported concerns about nursing care institutions, and approximately 2,530 have been investigated. Of the 11 enforcement actions undertaken by the Department in the past year, none resulted in the suspension or revocation of a license, but $5,250 in civil money penalties were assessed.

The rules in 9 A.A.C. 10, Article 4, were revised in their entirety in 2013 at 19 A.A.R. 2015 as part of an exempt rulemaking of 9 A.A.C. 10 to comply with Laws 2011, Ch. 96. They have subsequently been revised in five additional rulemakings, in 2014 at 20 A.A.R. 1409, October 2019 at 25 A.A.R. 1583, November 2019 at 25 A.A.R. 3481, 2020 at 26 A.A.R. 3041, and 2022 at 28 A.A.R. 1113, to address issues that arose with the rules in the Article. Stakeholders for these rulemakings include the Department, Arizona nursing care institutions, residents and their families, and the general public. Only for the rulemaking effective October 2019 is there an EIS available. In this EIS, annual cost/revenue changes are designated as minimal when more than $0 and $2,000 or less, moderate when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. These designations will also be used when analyzing the economic effect of the other rulemakings, which were either conducted as exempt rulemakings or expedited rulemakings for which no EIS was required or prepared.

Only one rule, R9-10-404, remains unchanged from the 2013 exempt rulemaking, which was undertaken to adopt rules regarding health care institutions that reduce monetary or regulatory costs on persons or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." This rule established a Section for Quality Management, collecting requirements that had existed in the previous rules in one location and clarifying those requirements. In the 2018 five-year-review report (5YRR), the first 5YRR after the rules were adopted, the Department stated a belief that the change provided a significant benefit to

the Department by reducing confusion about the rules, and that Arizona nursing care institutions may also have received a significant benefit from the clarity of the new rule. The Department believes that the actual costs and benefits experienced by persons affected by the rule are generally consistent with the estimated costs and benefits expressed in the 2018 5YRR and considered in developing the rule.

In the 2014 exempt rulemaking, which was an extension of the 2013 rulemaking undertaken for the same purpose at the suggestion of stakeholders, 12 rules were last revised. These include R9-10-405, in which formatting was revised; R9-10-410, in which requirements were clarified; R9-10-411, in which requirements were clarified, including those related to who may view resident records, and requirements for being a resident's representative were added; R9-10-413, R9-10-416, R9-10-417, R9-10-419, R9-10-420, and R9-10-421, in which requirements were clarified; R9-10-422, in which requirements related to reporting of communicable diseases were removed as duplicative of requirements in 9 A.A.C. 6; R9-10-423, in which dietary guidelines were updated to the then-current version; and R9-10-424, in which requirements for disaster drill and evacuation drills were clarified and made more effective. In the 2018 5YRR, the Department stated a belief that these changes reduced the burden on nursing care institutions and provided a minimal-to-moderate benefit to a nursing care institution. The Department believes that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the estimated costs and benefits expressed in the 2018 5YRR and considered in developing the rules.

The regular rulemaking, effective October 2019, was undertaken mainly to comply with changes made by Laws 2017, Ch. 122, which instituted perpetual health care institution licenses. In the rulemaking, changes were made to 11 rules in Article 4, addressing issues identified in the 2018 5YRR, including changes required by Laws 2017, Ch. 122, as well as changes made necessary by revisions to other rules in the Chapter as part of an exempt rulemaking, filed with the Office of the Secretary of State on April 25, 2019, to comply with Laws 2019, Ch. 133, after the 2018 5YRR was submitted to the Council. In R9-10-401, the definitions of "rehabilitation services" and "full-time" were removed as unnecessary, since definitions for those terms were added to R9-10-101 as part of the exempt rulemaking. In other locations, rules were changed to remove references to "initial" licenses, clarify requirements related to restraints to correct an apparent inconsistency in the use of restraints in nursing care institutions, correct cross-references or grammar, and make other changes to clarify existing requirements. In the 2019 EIS, health care institutions, including nursing care institutions, were expected to receive a significant benefit from not having to go through the license renewal process. The Department believed that a nursing care institution that was inappropriately using restraints might incur minimal-to-moderate costs to change the procedures being followed, and that this clarification could provide all nursing care institutions with a significant benefit. The Department also anticipated that the changes clarifying requirements might provide a significant benefit to a personnel member of a nursing care institution by making it easier to understand and comply with the requirements. A resident of a nursing care institution was also believed to receive a significant benefit from improved services being provided by personnel members who better understand and comply with the clarified rules. The Department believes that the actual costs and benefits experienced by persons affected by the rules are

generally consistent with the estimated costs and benefits expressed in the 2019 EIS.

The remaining three rules in the Article were last revised as parts of three expedited rulemakings. In the November 2019 expedited rulemaking, R9-10-426 was revised to correct a cross-reference to a Section containing physical plant codes and standards, the contents of which were adopted in R9-10-104.01, allowing those same codes and standards in A.A.C. R9-1-412 to expire under A.R.S. § 41-1056(J). In the 2020 expedited rulemaking, R9-10-406 was revised to comply with Laws 2019, Ch. 215 § 4, which requires the Department to allow "a person who is employed at a health care institution that provides behavioral health services, who is not a licensed behavioral health professional and who is at least eighteen years of age to provide behavioral health or other related health care services pursuant to all applicable department rules." In the 2022 expedited rulemaking, R9-10-407 was revised to be consistent with changes made in R9-10-113, related to screening for tuberculosis. The changes to be made were anticipated to not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated, but reduce a burden due to outdated requirements without compromising health and safety. The Department believes that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the anticipated costs and benefits.

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 2018 5YRR, the Department planned to amend the rules in 9 A.A.C. 10, Article 4 as necessary to comply with Laws 2017, Ch. 122, and to address other items mentioned in the 5YRR. In August 2019, the Department completed this course of action through regular rulemaking found in 25 A.A.R. 1583.

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 nursing care institutions. Any failure for a nursing care institution to meet the minimum requirements prescribed by rule poses a threat to the health and safety of residents and vulnerable individuals seeking care in nursing care institutions. 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 that will be remedied in the proposed plan of action, the rules in 9 A.A.C. 10, Articles 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 _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. 10, Article 4, are not more stringent than related 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 require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405. A.R.S. § 36-407 prohibits a person from establishing, conducting, or maintaining "a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining." A health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided. Therefore, a general permit is not applicable and is not used.

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. 10, Article 4, as necessary to comply with 2022 statutory changes and to address other items mentioned in this report. These described changes will improve the effectiveness of the rules, and the health and safety of residents receiving care from a nursing care institution. Therefore, the Department plans to submit a Notice of Final Expedited Rulemaking to the Governor's Regulatory Review Council by December 2023.

CURRENT RULES IN 9 A.A.C. 10, ARTICLE 4

ARTICLE 4. NURSING CARE INSTITUTIONS

Section

ARTICLE 4. NURSING CARE INSTITUTIONS

R9-10-401. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Administrator" has the same meaning as in A.R.S. § 36-446.
2. "Care plan" means a documented description of physical health services and behavioral health services expected to be provided to a resident, based on the resident's comprehensive assessment, that includes measurable objectives and the methods for meeting the objectives.
3. "Direct care" means medical services, nursing services, or social services provided to a resident.
4. "Director of nursing" means an individual who is responsible for the nursing services provided in a nursing care institution.
5. "Highest practicable" means a resident's optimal level of functioning and well-being based on the resident's current functional status and potential for improvement as determined by the resident's comprehensive assessment.
6. "Intermittent" means not on a regular basis.
7. "Nursing care institution services" means medical services, nursing services, behavioral care, health-related services, ancillary services, social services, and environmental services provided to a resident.
8. "Resident group" means residents or residents' family members who:
    a. Plan and participate in resident activities, or
    b. Meet to discuss nursing care institution issues and policies.
9. "Secured" means the use of a method, device, or structure that:
    a. Prevents a resident from leaving an area of the nursing care institution's premises, or
    b. Alerts a personnel member of a resident's departure from the nursing care institution.
10. "Social services" means assistance provided to or activities provided for a resident to maintain or improve the resident's physical, mental, and psychosocial capabilities.
11. "Total health condition" means a resident's overall physical and psychosocial well-being as determined by the resident's comprehensive assessment.
12. "Unnecessary drug" means a medication that is not required because:
    a. There is no documented indication for a resident's use of the medication;
    b. The medication is duplicative;
    c. The medication is administered before determining whether the resident requires the medication; or

d. The resident has experienced an adverse reaction from the medication, indicating that the medication should be reduced or discontinued.

13. "Ventilator" means a device designed to provide, to a resident who is physically unable to breathe or who is breathing insufficiently, the mechanism of breathing by mechanically moving breathable air into and out of the resident's lungs.

R9-10-402. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as a nursing care institution shall include:

1. In a Department-provided format whether the applicant:
   a. Has:
      i. A secured area for a resident with Alzheimer's disease or other dementia, or
      ii. An area for a resident on a ventilator;
   b. Is requesting authorization to provide to a resident:
      i. Behavioral health services,
      ii. Clinical laboratory services,
      iii. Dialysis services, or
      iv. Radiology services and diagnostic imaging services; and
   c. Is requesting authorization to operate a nutrition and feeding assistant training program; and
2. If the governing authority is requesting authorization to operate a nutrition and feeding assistant training program, the information in R9-10-116(B)(1)(a), (B)(1)(c), and (B)(2).

R9-10-403. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of a nursing care institution;
2. Establish, in writing, the nursing care institution's scope of services;
3. Designate, in writing, a nursing care institution administrator licensed according to A.R.S. Title 36, Chapter 4, Article 6;
4. Adopt a quality management program according to R9-10-404;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator licensed according to A.R.S. § Title 36, Chapter 4, Article 6, if the administrator is:

a. Expected not to be present on the nursing care institution's premises for more than 30 calendar days, or

b. Not present on the nursing care institution's premises for more than 30 calendar days; and

7. Except as permitted in subsection (A)(6), when there is a change of administrator, notify the Department according to A.R.S. § 36-425(I) and submit a copy of the new administrator's license under A.R.S. Title 36, Chapter 4, Article 6 to the Department.

B. An administrator:

1. Is directly accountable to the governing authority of a nursing care institution for the daily operation of the nursing care institution and all services provided by or at the nursing care institution;
2. Has the authority and responsibility to manage the nursing care institution;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the nursing care institution's premises and accountable for the nursing care institution when the administrator is not present on the nursing care institution's premises;
4. Ensures the nursing care institution's compliance with A.R.S. § 36-411; and
5. If the nursing care institution provides feeding and nutrition assistant training, ensures the nursing care institution complies with the requirements for the operation of a feeding and nutrition assistant training program in R9-10-116.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
   b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
   c. Include how a personnel member may submit a complaint relating to resident care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Cover cardiopulmonary resuscitation training including:
      i. Which personnel members are required to obtain cardiopulmonary resuscitation training,
      ii. The method and content of cardiopulmonary resuscitation training,
      iii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
      iv. The time-frame for renewal of cardiopulmonary resuscitation training, and
      v. The documentation that verifies an individual has received cardiopulmonary resuscitation training;

f. Cover first aid training;
g. Include a method to identify a resident to ensure the resident receives physical health services and behavioral health services as ordered;
h. Cover resident rights, including assisting a resident who does not speak English or who has a disability to become aware of resident rights;
i. Cover specific steps for:
    i. A resident to file a complaint, and
    ii. The nursing care institution to respond to a resident's complaint;
j. Cover health care directives;
k. Cover medical records, including electronic medical records;
l. Cover a quality management program, including incident reports and supporting documentation;
m. Cover contracted services;
n. Cover resident's personal accounts;
o. Cover petty cash funds;
p. Cover fees and refund policies;
q. Cover misappropriation of resident property; and
r. Cover when an individual may visit a resident in a nursing care institution; and

2. Policies and procedures for physical health services and behavioral health services are established, documented, and implemented to protect the health and safety of a resident that:
    a. Cover resident screening, admission, transport, transfer, discharge planning, and discharge;
    b. Cover the provision of physical health services and behavioral health services;
    c. Include when general consent and informed consent are required;
    d. Cover storing, dispensing, administering, and disposing of medication;
    e. Cover infection control;
    f. Cover how personnel members will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
    g. Cover telemedicine, if applicable; and
    h. Cover environmental services that affect resident care;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
5. Unless otherwise stated:

a. Documentation required by this Article is provided to the Department within two hours after a Department request; and

b. When documentation or information is required by this Chapter to be submitted on behalf of a nursing care institution, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the nursing care institution.

D. Except for health screening services, an administrator shall ensure that medical services, nursing services, health-related services, behavioral health services, or ancillary services provided by a nursing care institution are only provided to a resident.

E. If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from a nursing care institution's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:

1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
2. For a resident under 18 years of age, according to A.R.S. § 13-3620.

F. If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from a nursing care institution's employee or personnel member, an administrator shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the resident as follows:
   a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
   b. For a resident under 18 years of age, according to A.R.S. § 13-3620;
3. Document:
   a. The suspected abuse, neglect, or exploitation;
   b. Any action taken according to subsection (F)(1); and
   c. The report in subsection (F)(2);
4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
   a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
   b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
   c. The names of witnesses to the suspected abuse, neglect, or exploitation; and

d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and

6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

G. An administrator shall:

1. Allow a resident advocate to assist a resident, the resident's representative, or a resident group with a request or recommendation, and document in writing any complaint submitted to the nursing care institution;
2. Ensure that a monthly schedule of recreational activities for residents is developed, documented, and implemented; and
3. Ensure that the following are conspicuously posted on the premises:
   a. The current nursing care institution license and quality rating issued by the Department;
   b. The name, address, and telephone number of:
      i. The Department's Office of Long Term Care,
      ii. The State Long-Term Care Ombudsman Program, and
      iii. Adult Protective Services of the Department of Economic Security;
   c. A notice that a resident may file a complaint with the Department concerning the nursing care institution;
   d. The monthly schedule of recreational activities; and
   e. One of the following:
      i. A copy of the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect; or
      ii. A notice that the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect are available for review upon request.

H. An administrator shall provide written notification to the Department of a resident's:

1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.

I. If an administrator administers a resident's personal account at the request of the resident or the resident's representative, the administrator shall:

1. Comply with policies and procedures established according to subsection (C)(1)(n);
2. Designate a personnel member who is responsible for the personal accounts;
3. Maintain a complete and separate accounting of each personal account;
4. Obtain written authorization from the resident or the resident's representative for a personal account transaction;
5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
6. Transfer all money from the resident's personal account in excess of $50.00 to an interest-bearing account and credit the interest to the resident's personal account; and
7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's representative, or the probate jurisdiction administering the resident's estate.

J. If a petty cash fund is established for use by residents, the administrator shall ensure that:

1. The policies and procedures established according to subsection (C)(1)(o) include:
   a. A prescribed cash limit of the petty cash fund, and
   b. The hours of the day a resident may access the petty cash fund; and
2. A resident's written acknowledgment is obtained for a petty cash transaction.

R9-10-404. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate services provided to residents;
   c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
   d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
   e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
   a. An identification of each concern about the delivery of services related to resident care; and
   b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and

3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

R9-10-405. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-406. Personnel

A. An administrator shall ensure that a behavioral health technician or behavioral health paraprofessional is at least 18 years old.

B. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the residents receiving physical health services or behavioral health services from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides physical health services or behavioral health services, and

b. According to policies and procedures;

3. Sufficient personnel members are present on a nursing care institution's premises with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the nursing care institution's scope of services,
   b. Meet the needs of a resident, and
   c. Ensure the health and safety of a resident.

C. Except as provided in R9-10-415, an administrator shall ensure that, if a personnel member provides social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, the personnel member is licensed under A.R.S. Title 32, Chapter 33, Article 5.

D. An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.

E. An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the nursing care institution, and
2. As specified in R9-10-113.

F. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
   a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
   b. The individual's education and experience applicable to the individual's job duties;
   c. The individual's compliance with the requirements in A.R.S. § 36-411;
   d. Orientation and in-service education as required by policies and procedures;
   e. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
   f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
   g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-303(C)(1)(e);

h. First aid training, if required for the individual according to this Article or policies and procedures; and

i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (E); and

j. If the individual is a nutrition and feeding assistant:

i. Completion of the nutrition and feeding assistant training course required in R9-10-116, and

ii. A nurse's observations required in R9-10- 423(C)(6).

G. An administrator shall ensure that personnel records are:

1. Maintained:
   a. Throughout the individual's period of providing services in or for the nursing care institution, and
   b. For at least 24 months after the last date the individual provided services in or for the nursing care institution; and
2. For a personnel member who has not provided physical health services or behavioral health services at or for the nursing care institution during the previous 12 months, provided to the Department within 72 hours after the Department's request.

H. An administrator shall ensure that:

1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
2. A personnel member completes orientation before providing behavioral health services or physical health services;
3. An individual's orientation is documented, to include:
   a. The individual's name,
   b. The date of the orientation, and
   c. The subject or topics covered in the orientation;
4. A plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
5. A personnel member's in-service education is documented, to include:
   a. The personnel member's name,
   b. The date of the training, and
   c. The subject or topics covered in the training.
5. A work schedule of each personnel member is developed and maintained at the nursing care institution for at least 12 months after the date of the work schedule.

I. An administrator shall designate a qualified individual to provide:

1. Social services, and
2. Recreational activities.

R9-10-407. Admission

An administrator shall ensure that:

1. A resident is admitted only on a physician's order;
2. The physician's admitting order includes the nursing care institution services required to meet the immediate needs of a resident, such as medication and food services;
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment on a resident to ensure the resident's immediate needs for nursing care institution services are met;
4. A resident's needs do not exceed the medical services and nursing services available at the nursing care institution as established in the nursing care institution's scope of services;
5. Before or at the time of admission, a resident or the resident's representative:
    a. Receives a documented agreement with the nursing care institution that includes rates and charges,
    b. Is informed of third-party coverage for rates and charges,
    c. Is informed of the nursing care institution's refund policy, and
    d. Receives written information concerning the nursing care institution's policies and procedures related to a resident's health care directives;
6. Within 30 calendar days before admission or 10 working days after admission, a medical history and physical examination is completed on a resident by:
    a. A physician, or
    b. A physician assistant or a registered nurse practitioner designated by the attending physician;
7. Except as specified in subsection (8), a resident provides evidence of freedom from infectious tuberculosis:
    a. Before or within seven calendar days after the resident's admission, and
    b. As specified in R9-10-113;
8. A resident who transfers from a nursing care institution to another nursing care institution is not required to be rescreened for tuberculosis as specified in R9-10-113 if:
    a. Fewer than 12 months have passed since the resident was screened for tuberculosis, and
    b. The documentation of freedom from infectious tuberculosis required in subsection (7) accompanies the resident at the time of transfer; and

9. Compliance with the requirements in subsection (6) is documented in the resident's medical record.

R9-10-408. Transfer; Discharge

A. An administrator shall ensure that:

1. A resident is transferred or discharged if:
   a. The nursing care institution is not authorized or not able to meet the needs of the resident, or
   b. The resident's behavior is a threat to the health or safety of the resident or other individuals at the nursing care institution; and
2. Documentation of a resident's transfer or discharge includes:
   a. The date of the transfer or discharge;
   b. The reason for the transfer or discharge;
   c. A 30-day written notice except:
      i. In an emergency, or
      ii. If the resident no longer requires nursing care institution services as determined by a physician or the physician's designee;
   d. A notation by a physician or the physician's designee if the transfer or discharge is due to any of the reasons listed in subsection (A)(1); and
   e. If applicable, actions taken by a personnel member to protect the resident or other individuals if the resident's behavior is a threat to the health and safety of the resident or other individuals in the nursing care institution.

B. An administrator may transfer or discharge a resident for failure to pay for residency if:

1. The resident or resident's representative receives a 30-day written notice of transfer or discharge, and
2. The 30-day written notice includes an explanation of the resident's right to appeal the transfer or discharge.

C. Except for a transfer of a resident due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the resident;
2. According to policies and procedures:
   a. An evaluation of the resident is conducted before the transfer;
   b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
   c. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and

3. Documentation in the resident's medical record includes:
    a. Communication with an individual at a receiving health care institution;
    b. The date and time of the transfer;
    c. The mode of transportation; and
    d. If applicable, the name of the personnel member accompanying the resident during a transfer.

D. Except in an emergency, a director of nursing shall ensure that before a resident is discharged:

1. Written follow-up instructions are developed with the resident or the resident's representative that includes:
    a. Information necessary to meet the resident's need for medical services and nursing services; and
    b. The state long-term care ombudsman's name, address, and telephone number;
2. A copy of the written follow-up instructions is provided to the resident or the resident's representative; and
3. A discharge summary is developed by a personnel member and authenticated by the resident's attending physician or designee and includes:
    a. The resident's medical condition at the time of transfer or discharge,
    b. The resident's medical and psychosocial history,
    c. The date of the transfer or discharge, and
    d. The location of the resident after discharge.

R9-10-409. Transport

A. Except as provided in subsection (B), an administrator shall ensure that:

1. A personnel member coordinates the transport and the services provided to the resident;
2. According to policies and procedures:
    a. An evaluation of the resident is conducted before and after the transport,
    b. Information from the resident's medical record is provided to a receiving health care institution, and
    c. A personnel member explains risks and benefits of the transport to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
    a. Communication with an individual at a receiving health care institution;
    b. The date and time of the transport;
    c. The mode of transportation; and

d. If applicable, the name of the personnel member accompanying the resident during a transport.

B. Subsection (A) does not apply to:

1. Transportation to a location other than a licensed health care institution,
2. Transportation provided for a resident by the resident or the resident's representative,
3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
4. A transport to another licensed health care institution in an emergency.

R9-10-410. Resident Rights

A. An administrator shall ensure that:

1. The requirements in subsection (B) and the resident rights in subsection (C) are conspicuously posted on the premises;
2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C); and
3. Policies and procedures include:
   a. How and when a resident or the resident's representative is informed of resident rights in subsection (C), and
   b. Where resident rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:

1. A resident has privacy in:
   a. Treatment,
   b. Bathing and toileting,
   c. Room accommodations, and
   d. A visit or meeting with another resident or an individual;
2. A resident is treated with dignity, respect, and consideration;
3. A resident is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;
   g. Sexual assault;

h. Seclusion;
i. Restraint;
j. Retaliation for submitting a complaint to the Department or another entity; or
k. Misappropriation of personal and private property by a nursing care institution's personnel members, employees, volunteers, or students; and

4. A resident or the resident's representative:
   a. Except in an emergency, either consents to or refuses treatment;
   b. May refuse or withdraw consent for treatment before treatment is initiated;
   c. Except in an emergency, is informed of proposed alternatives to psychotropic medication or a surgical procedure and the associated risks and possible complications of the psychotropic medication or surgical procedure;
   d. Is informed of the following:
      i. The health care institution's policy on health care directives, and
      ii. The resident complaint process;
   e. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when admitted to a nursing care institution for identification and administrative purposes;
   f. May manage the resident's financial affairs;
   g. May review the nursing care institution's current license survey report and, if applicable, plan of correction in effect;
   h. Has access to and may communicate with any individual, organization, or agency;
   i. May participate in a resident group;
   j. May review the resident's financial records within two working days and medical record within one working day after the resident's or the resident's representative's request;
   k. May obtain a copy of the resident's financial records and medical record within two working days after the resident's request and in compliance with A.R.S. § 12-2295;
   l. Except as otherwise permitted by law, consents, in writing, to the release of information in the resident's:
      i. Medical record, and
      ii. Financial records;
   m. May select a pharmacy of choice if the pharmacy complies with policies and procedures and does not pose a risk to the resident;
   n. Is informed of the method for contacting the resident's attending physician;
   o. Is informed of the resident's total health condition;

p. Is provided with a copy of those sections of the resident's medical record that are required for continuity of care free of charge, according to A.R.S. § 12-2295, if the resident is transferred or discharged;

q. Is informed in writing of a change in rates and charges at least 60 calendar days before the effective date of the change; and

r. Except in the event of an emergency, is informed orally or in writing before the nursing care institution makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical record.

C. A resident has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the resident's individuality, choices, strengths, and abilities;
3. To choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
4. To participate in social, religious, political, and community activities that do not interfere with other residents;
5. To retain personal possessions including furnishings and clothing as space permits unless use of the personal possession infringes on the rights or health and safety of other residents;
6. To share a room with the resident's spouse if space is available and the spouse consents;
7. To receive a referral to another health care institution if the nursing care institution is not authorized or not able to provide physical health services or behavioral health services needed by the resident;
8. To participate or have the resident's representative participate in the development of, or decisions concerning, treatment;
9. To participate or refuse to participate in research or experimental treatment; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

R9-10-411. Medical Records

A. An administrator shall ensure that:

1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:

a. Recorded only by an individual authorized by policies and procedures to make the entry;
b. Dated, legible, and authenticated; and
c. Not changed to make the initial entry illegible;

3. An order is:
   a. Dated when the order is entered in the resident's medical record and includes the time of the order;
   b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
   c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A resident's medical record is available to an individual:
   a. Authorized to access the resident's medial record according to policies and procedures;
   b. If the individual is not authorized to access the resident's medical record according to policies and procedures, with the written consent of the resident or the resident's representative; or
   c. As permitted by law; and
6. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If a nursing care institution maintains residents' medical records electronically, an administrator shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a resident's medical record contains:

1. Resident information that includes:
   a. The resident's name;
   b. The resident's date of birth; and
   c. Any known allergies, including medication allergies;
2. The admission date and, if applicable, the date of discharge;
3. The admitting diagnosis or presenting symptoms;
4. Documentation of general consent and, if applicable, informed consent;
5. If applicable, the name and contact information of the resident's representative and:

a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
b. If the resident's representative:
    i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
    ii. Is a legal guardian, a copy of the court order establishing guardianship;

6. The medical history and physical examination required in R9-10-407(6);
7. A copy of the resident's living will or other health care directive, if applicable;
8. The name and telephone number of the resident's attending physician;
9. Orders;
10. Care plans;
11. Behavioral care plans, if the resident is receiving behavioral care;
12. Documentation of nursing care institution services provided to the resident;
13. Progress notes;
14. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
15. If applicable, documentation that evacuation from the nursing care institution would cause harm to the resident;
16. The disposition of the resident after discharge;
17. The discharge plan;
18. The discharge summary;
19. Transfer documentation;
20. If applicable:
    a. A laboratory report,
    b. A radiologic report,
    c. A diagnostic report, and
    d. A consultation report;
21. Documentation of freedom from infectious tuberculosis required in R9-10-407(7);
22. Documentation of a medication administered to the resident that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. The type of vaccine, if applicable;
    d. For a medication administered for pain on a PRN basis:

i. An evaluation of the resident's pain before administering the medication, and
ii. The effect of the medication administered;

e. For a psychotropic medication administered on a PRN basis:
i. An evaluation of the resident's symptoms before administering the psychotropic medication, and
ii. The effect of the psychotropic medication administered;

f. The identification, signature, and professional designation of the individual administering the medication; and

g. Any adverse reaction a resident has to the medication;

23. If the resident has been assessed for receiving nutrition and feeding assistance from a nutrition and feeding assistant, documentation of the assessment and the determination of eligibility; and

24. If applicable, a copy of written notices, including follow-up instructions, provided to the resident or the resident's representative.

R9-10-412. Nursing Services

A. An administrator shall ensure that:

1. Nursing services are provided 24 hours a day in a nursing care institution;
2. A director of nursing is appointed who:
   a. Is a registered nurse,
   b. Works full-time at the nursing care institution, and
   c. Is responsible for the direction of nursing services;
3. The director of nursing or an individual designated by the administrator participates in the quality management program; and
4. If the daily census of the nursing care institution is 60 or more, the director of nursing does not provide direct care to residents on a regular basis.

B. A director of nursing shall ensure that:

1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on the residents' comprehensive assessments, orders for physical health services and behavioral health services, and care plans and the nursing care institution's scope of services;
2. Sufficient nursing personnel, as determined by the method in subsection (B)(1), are on the nursing care institution premises to meet the needs of a resident for nursing services;
3. At least one nurse is present on the nursing care institution's premises and responsible for providing direct care to not more than 64 residents;

4. Documentation of nursing personnel present on the nursing care institution's premises each day is maintained and includes:
    a. The date,
    b. The number of residents,
    c. The name and license or certification title of each nursing personnel member who worked that day, and
    d. The actual number of hours each nursing personnel member worked that day;
5. The documentation of nursing personnel required in subsection (B)(4) is maintained for at least 12 months after the date of the documentation;
6. As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:
    a. Is injured,
    b. Is involved in an incident that may require medical services, or
    c. Has a significant change in condition; and
7. An unnecessary drug is not administered to a resident.

R9-10-413. Medical Services

A. An administrator shall appoint a medical director.

B. A medical director shall ensure that:
1. A resident has an attending physician;
2. An attending physician is available 24 hours a day;
3. An attending physician designates a physician who is available when the attending physician is not available;
4. A physical examination is performed on a resident at least once every 12 months after the date of admission by an individual listed in R9-10-407(6);
5. As required in A.R.S. § 36-406, vaccinations for influenza and pneumonia are available to each resident at least once every 12 months unless:
    a. The attending physician provides documentation that the vaccination is medically contraindicated;
    b. The resident or the resident's representative refuses the vaccination or vaccinations and documentation is maintained in the resident's medical record that the resident or the resident's representative has been informed of the risks and benefits of a vaccination refused; or

c. The resident or the resident's representative provides documentation that the resident received a pneumonia vaccination within the last five years or the current recommendation from the U.S. Department of Health and Human Services, Center for Disease Control and Prevention; and

6. If the any of the following services are not provided by the nursing care institution and needed by a resident, the resident is assisted in obtaining, at the resident's expense:
   a. Vision services;
   b. Hearing services;
   c. Dental services;
   d. Clinical laboratory services from a laboratory that holds a certificate of accreditation or certificate of compliance issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
   e. Psychosocial services;
   f. Physical therapy;
   g. Speech therapy;
   h. Occupational therapy;
   i. Behavioral health services; and
   j. Services for an individual who has a developmental disability, as defined in A.R.S. Title 36, Chapter 5.1, Article 1.

R9-10-414. Comprehensive Assessment; Care Plan

A. A director of nursing shall ensure that:
1. A comprehensive assessment of a resident:
   a. Is conducted or coordinated by a registered nurse in collaboration with an interdisciplinary team;
   b. Is completed for the resident within 14 calendar days after the resident's admission to a nursing care institution;
   c. Is updated:
      i. No later than 12 months after the date of the resident's last comprehensive assessment, and
      ii. When the resident experiences a significant change;
   d. Includes the following information for the resident:
      i. Identifying information;
      ii. An evaluation of the resident's hearing, speech, and vision;

iii. An evaluation of the resident's ability to understand and recall information;

iv. An evaluation of the resident's mental status;

v. Whether the resident's mental status or behaviors:

(1) Put the resident at risk for physical illness or injury,

(2) Significantly interfere with the resident's care,

(3) Significantly interfere with the resident's ability to participate in activities or social interactions,

(4) Put other residents or personnel members at significant risk for physical injury,

(5) Significantly intrude on another resident's privacy, or

(6) Significantly disrupt care for another resident;

vi. Preferences for customary routine and activities;

vii. An evaluation of the resident's ability to perform activities of daily living;

viii. Need for a mobility device;

ix. An evaluation of the resident's ability to control the resident's bladder and bowels;

x. Any diagnosis that impacts nursing care institution services that the resident may require;

xi. Any medical conditions that impact the resident's functional status, quality of life, or need for nursing care institution services;

xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;

xiii. An evaluation of the resident's oral and dental status;

xiv. An evaluation of the condition of the resident's skin;

xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;

xvi. Identification of any treatment or medication ordered for the resident;

xvii. A description of the resident or resident's representative's participation in the comprehensive assessment;

xviii. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;

xix. Potential for rehabilitation; and

xx. Potential for discharge; and

e. Is signed and dated by:

i. The registered nurse who conducts or coordinates the comprehensive assessment or review; and

ii. If a behavioral health professional is required to review according to subsection (A)(2), the behavioral health professional who reviewed the comprehensive assessment or review;

2. If any of the conditions in (A)(1)(d)(v) are answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and care plan to ensure that the resident's needs for behavioral health services are being met;
3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to a nursing care institution unless a physician, an individual designated by the physician, or a registered nurse determines the resident has a significant change in condition; and
4. A resident's comprehensive assessment is reviewed by a registered nurse at least once every three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition.

B. An administrator shall ensure that a care plan for a resident:

1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);
2. Is reviewed and revised based on any change to the resident's comprehensive assessment; and
3. Ensures that a resident is provided nursing care institution services that:
   a. Address any medical condition or behavioral health issue identified in the resident's comprehensive assessment, and
   b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

R9-10-415. Behavioral Health Services

Except for behavioral care, if a nursing care institution is authorized to provide behavioral health services, an administrator shall ensure that:

1. The behavioral health services are provided:
   a. Under the direction of a behavioral health professional licensed or certified to provide the type of behavioral health services in the nursing care institution's scope of services; and
   b. In compliance with the requirements:
      i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
      ii. For an assessment, in R9-10-1011(B); and

2. Except for a psychotropic drug ordered by a medical practitioner for a resident's out-of-control behavior or administered according to an order from a court of competent jurisdiction, informed consent is obtained from a resident or the resident's representative for a psychotropic drug and documented in the resident's medical record before the psychotropic drug is administered to the resident.

R9-10-416. Clinical Laboratory Services

If clinical laboratory services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that:

1. Clinical laboratory services and pathology services are provided through a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation, certificate of compliance, or certificate of waiver in subsection (1) is provided to the Department for review upon the Department's request;
3. The nursing care institution:
    a. Is able to provide the clinical laboratory services delineated in the nursing care institution's scope of services when needed by the residents,
    b. Obtains specimens for the clinical laboratory services delineated in the nursing care institution's scope of services without transporting the residents from the nursing care institution's premises, and
    c. Has the examination of the specimens performed by a clinical laboratory;
4. Clinical laboratory and pathology test results are:
    a. Available to the ordering physician:
        i. Within 24 hours after the test is complete with results if the test is performed at a laboratory on the nursing care institution's premises, or
        ii. Within 24 hours after the test result is received if the test is performed at a laboratory outside of the nursing care institution's premises; and
    b. Documented in a resident's medical record;
5. If a test result is obtained that indicates a resident may have an emergency medical condition, as established in policies and procedures, personnel notify:
    a. The ordering physician,
    b. A registered nurse in the resident's assigned unit,
    c. The nursing care institution's administrator, or

d. The director of nursing;

6. If a clinical laboratory report is completed on a resident, a copy of the report is included in the resident's medical record;
7. If the nursing care institution provides blood or blood products, policies and procedures are established, documented, and implemented for:
   a. Procuring, storing, transfusing, and disposing of blood or blood products;
   b. Blood typing, antibody detection, and blood compatibility testing; and
   c. Investigating transfusion adverse reactions that specify a process for review through the quality management program; and
8. Expired laboratory supplies are discarded according to policies and procedures.

R9-10-417. Dialysis Services

If dialysis services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that the dialysis services are provided in compliance with the requirements in R9-10-1018.

R9-10-418. Radiology Services and Diagnostic Imaging Services

If radiology services or diagnostic imaging services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that:

1. Radiology services and diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and 9 A.A.C. 7;
2. A copy of a certificate documenting compliance with subsection (1) is maintained by the nursing care institution;
3. When needed by a resident, radiology services and diagnostic imaging services delineated in the nursing care institution's scope of services are provided on the nursing care institution's premises;
4. Radiology services and diagnostic imaging services are provided:
   a. Under the direction of a physician; and
   b. According to an order that includes:
      i. The resident's name,
      ii. The name of the ordering individual,
      iii. The radiological or diagnostic imaging procedure ordered, and
      iv. The reason for the procedure;
5. A medical director, attending physician, or radiologist interprets the radiologic or diagnostic image;
6. A radiologic or diagnostic imaging report is prepared that includes:

a. The resident's name;
b. The date of the procedure;
c. A medical director, attending physician, or radiologist's interpretation of the image;
d. The type and amount of radiopharmaceutical used, if applicable; and
e. The resident's adverse reaction to the radiopharmaceutical, if any; and

7. A radiologic or diagnostic imaging report is included in the resident's medical record.

R9-10-419. Respiratory Care Services

If respiratory care services are provided on a nursing care institution's premises, an administrator shall ensure that:

1. Respiratory care services are provided under the direction of a medical director or attending physician;
2. Respiratory care services are provided according to an order that includes:
   a. The resident's name;
   b. The name and signature of the ordering individual;
   c. The type, frequency, and, if applicable, duration of treatment;
   d. The type and dosage of medication and diluent; and
   e. The oxygen concentration or oxygen liter flow and method of administration;
3. Respiratory care services provided to a resident are documented in the resident's medical record and include:
   a. The date and time of administration;
   b. The type of respiratory care services provided;
   c. The effect of the respiratory care services;
   d. The resident's adverse reaction to the respiratory care services, if any; and
   e. The authentication of the individual providing the respiratory care services; and
4. Any area or unit that performs blood gases or clinical laboratory tests complies with the requirements in R9-10-416.

R9-10-420. Rehabilitation Services

If rehabilitation services are provided on a nursing care institution's premises, an administrator shall ensure that:

1. Rehabilitation services are provided:
   a. Under the direction of an individual qualified according to policies and procedures,
   b. By an individual licensed to provide the rehabilitation services, and

c. According to an order; and

2. The medical record of a resident receiving rehabilitation services includes:
   a. An order for rehabilitation services that includes the name of the ordering individual and a referring diagnosis,
   b. A documented care plan that is developed in coordination with the ordering individual and the individual providing the rehabilitation services,
   c. The rehabilitation services provided,
   d. The resident's response to the rehabilitation services, and
   e. The authentication of the individual providing the rehabilitation services.

R9-10-421. Medication Services

A. An administrator shall ensure that policies and procedures for medication services:
1. Include:
   a. A process for providing information to a resident about medication prescribed for the resident including:
      i. The prescribed medication's anticipated results,
      ii. The prescribed medication's potential adverse reactions,
      iii. The prescribed medication's potential side effects, and
      iv. Potential adverse reactions that could result from not taking the medication as prescribed;
   b. Procedures for preventing, responding to, and reporting:
      i. A medication error,
      ii. An adverse response to a medication, or
      iii. A medication overdose;
   c. Procedures to ensure that a pharmacist reviews a resident's medications at least once every three months and provides documentation to the resident's attending physician and the director of nursing indicating potential medication problems such as incompatible or duplicative medications;
   d. Procedures for documenting medication services; and
   e. Procedures for assisting a resident in obtaining medication; and
2. Specify a process for review through the quality management program of:
   a. A medication administration error, and
   b. An adverse reaction to a medication.

B. An administrator shall ensure that:
1. Policies and procedures for medication administration:

a. Are reviewed and approved by the director of nursing;
b. Specify the individuals who may:
i. Order medication, and
ii. Administer medication;
c. Ensure that medication is administered to a resident only as prescribed; and
d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record;

2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
3. A medication administered to a resident:
a. Is administered in compliance with an order, and
b. Is documented in the resident's medical record; and
4. If a psychotropic medication is administered to a resident, the psychotropic medication:
a. Is only administered to a resident for a diagnosed medical condition; and
b. Unless clinically contraindicated or otherwise ordered by an attending physician or the attending physician's designee, is gradually reduced in dosage while the resident is simultaneously provided with interventions such as behavior and environment modification in an effort to discontinue the psychotropic medication, unless a dose reduction is attempted and the resident displays behavior justifying the need for the psychotropic medication, and the attending physician documents the necessity for the continued use and dosage.

C. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members; and
2. If pharmaceutical services are provided:
a. The pharmaceutical services are provided under the direction of a pharmacist;
b. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
c. A copy of the pharmacy license is provided to the Department upon request.

D. When medication is stored at a nursing care institution, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident for:
a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;

b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
c. A medication recall and notification of residents who received recalled medication; and
d. Storing, inventorying, and dispensing controlled substances.

E. An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the medical practitioner who ordered the medication and the nursing care institution's director of nursing.

R9-10-422. Infection Control

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
   a. A method to identify and document infections occurring at the nursing care institution;
   b. Analysis of the types, causes, and spread of infections and communicable diseases at the nursing care institution;
   c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the nursing care institution; and
   d. Documentation of infection control activities including:
      i. The collection and analysis of infection control data,
      ii. The actions taken related to infections and communicable diseases, and
      iii. Reports of communicable diseases to the governing authority and state and county health departments;
2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
3. Policies and procedures are established, documented, and implemented that cover:
   a. Handling and disposal of biohazardous medical waste;
   b. Sterilization, disinfection, and storage of medical equipment and supplies;
   c. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
   d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a resident;
   e. Training of personnel members, employees, and volunteers in infection control practices; and

f. Work restrictions for a personnel member with a communicable disease or infected skin lesion;

4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Soiled linen and clothing are:
   a. Collected in a manner to minimize or prevent contamination;
   b. Bagged at the site of use; and
   c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas; and
6. A personnel member, an employee, or a volunteer washes hands or uses a hand disinfection product after a resident contact and after handling soiled linen, soiled clothing, or potentially infectious material.

R9-10-423. Food Services

A. An administrator shall ensure that:
1. The nursing care institution has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the nursing care institution's food establishment license or permit is maintained;
3. If a nursing care institution contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the nursing care institution:
   a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the nursing care institution; and
   b. The nursing care institution is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
4. A registered dietitian:
   a. Reviews a food menu before the food menu is used to ensure that a resident's nutritional needs are being met,
   b. Documents the review of a food menu, and
   c. Is available for consultation regarding a resident's nutritional needs; and
5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to ensure that the nutritional needs of a resident are met.

B. A registered dietitian or director of food services shall ensure that:
1. Food is prepared:

a. Using methods that conserve nutritional value, flavor, and appearance; and
b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;

2. A food menu:
   a. Is prepared at least one week in advance,
   b. Includes the foods to be served on each day,
   c Is conspicuously posted at least one day before the first meal on the food menu will be served,
   d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
   e. Is maintained for at least 60 calendar days after the last day included in the food menu;
3. Meals and snacks for each day are planned and served using the applicable guidelines in http://www.health.gov/dietaryguidelines/2010.asp;
4. A resident is provided:
   a. A diet that meets the resident's nutritional needs as specified in the resident's comprehensive assessment and care plan;
   b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
   c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
   d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      i. A resident group agrees; and
      ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
5. A resident is provided with food substitutions of similar nutritional value if:
   a. The resident refuses to eat the food served, or
   b. The resident requests a substitution;
6. Recommendations and preferences are requested from a resident or the resident's representative for meal planning;
7. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils;
8. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair;

9. A resident eats meals in a dining area unless the resident chooses to eat in the resident's room or is confined to the resident's room for medical reasons documented in the resident's medical record; and
10. Water is available and accessible to residents.

C. If a nursing care institution has nutrition and feeding assistants, an administrator shall ensure that:

1. A nutrition and feeding assistant:
   a. Is at least 16 years of age;
   b. If applicable, complies with the fingerprint clearance card requirements in A.R.S. § 36-411;
   c. Completes a nutrition and feeding assistant training course within 12 months before initially providing nutrition and feeding assistance;
   d. Provides nutrition and feeding assistance where nursing personnel are present;
   e. Immediately reports an emergency to a nurse or, if a nurse is not present in the common area, to nursing personnel; and
   f. If the nutrition and feeding assistant observes a change in a resident's physical condition or behavior, reports the change to a nurse or, if a nurse is not present in the common area, to nursing personnel;
2. A resident is not eligible to receive nutrition and feeding assistance from a nutrition and feeding assistant if the resident:
   a. Has difficulty swallowing,
   b. Has had recurrent lung aspirations,
   c. Requires enteral feedings,
   d. Requires parenteral feedings, or
   e. Has any other eating or drinking difficulty that may cause the resident's health or safety to be compromised if the resident receives nutrition and feeding assistance from a nutrition and feeding assistant;
3. Only an eligible resident receives nutrition and feeding assistance from a nutrition and feeding assistant;
4. A nurse determines if a resident is eligible to receive nutrition and feeding assistance from a nutrition and feeding assistant, based on:
   a. The resident's comprehensive assessment,
   b. The resident's care plan, and
   c. An assessment conducted by the nurse when making the determination;
5. A method is implemented that identifies eligible residents that ensures only eligible residents receive nutrition and feeding assistance from a nutrition and feeding assistant;

6. When a nutrition and feeding assistant initially provides nutrition and feeding assistance and at least once every three months, a nurse observes the nutrition and feeding assistant while the nutrition and feeding assistant is providing nutrition and feeding assistance to ensure that the nutrition and feeding assistant is providing nutrition and feeding assistance appropriately;
7. A nurse documents the nurse's observations required in subsection (C)(6); and
8. A nutrition and feeding assistant is provided additional training:
    a. According to policies and procedures, and
    b. If a nurse identifies a need for additional training based on the nurse's observation in subsection (C)(6).

R9-10-424. Emergency and Safety Standards

A. An administrator shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
    a. When, how, and where residents will be relocated, including:
        i. Instructions for the evacuation or transfer of residents,
        ii. Assigned responsibilities for each employee and personnel member, and
        iii. A plan for continuing to provide services to meet a resident's needs;
    b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
    c. A plan for back-up power and water supply;
    d. A plan to ensure a resident's medications will be available to administer to the resident during a disaster;
    e. A plan to ensure a resident is provided nursing services and other services required by the resident during a disaster; and
    f. A plan for obtaining food and water for individuals present in the nursing care institution or the nursing care institution's relocation site during a disaster;
2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
3. Documentation of a disaster plan review required in subsection (A)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
    a. The date and time of the disaster plan review;
    b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
    c. A critique of the disaster plan review; and

d. If applicable, recommendations for improvement;

4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees and residents:
   a. Is conducted at least once every six months; and
   b. Includes all individuals on the premises except for:
      i. A resident whose medical record contains documentation that evacuation from the nursing care institution would cause harm to the resident, and
      ii. Sufficient personnel members to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate to a designated area;
   c. If applicable:
      i. An identification of residents needing assistance for evacuation, and
      ii. An identification of residents who were not evacuated;
   d. Any problems encountered in conducting the evacuation drill; and
   e. Recommendations for improvement, if applicable; and
7. An evacuation path is conspicuously posted on each hallway of each floor of the nursing care institution.

B. An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.

C. An administrator shall:

1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the fire inspection report, and
3. Maintain documentation of a current fire inspection.

R9-10-425. Environmental Standards

A. An administrator shall ensure that:

1. A nursing care institution's premises and equipment are:
   a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness and infection; and

b. Free from a condition or situation that may cause a resident or an individual to suffer physical injury;

2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
3. Equipment used to provide direct care is:
   a. Maintained in working order;
   b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
   c. Used according to the manufacturer's recommendations;
4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
5. Garbage and refuse are:
   a. In areas used for food storage, food preparation, or food service, stored in a covered container lined with a plastic bag;
   b. In areas not used for food storage, food preparation, or food service, stored:
      i. According to the requirements in subsection (A)(5)(a), or
      ii. In a paper-lined or plastic-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
   c. Removed from the premises at least once a week;
6. Heating and cooling systems maintain the nursing care institution at a temperature between 70° F and 84° F;
7. Common areas:
   a. Are lighted to assure the safety of residents, and
   b. Have lighting sufficient to allow personnel members to monitor resident activity;
8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
9. Linens are clean before use, without holes and stains, and not in need of repair;
10. Oxygen containers are secured in an upright position;
11. Poisonous or toxic materials stored by the nursing care institution are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
12. Combustible or flammable liquids stored by the nursing care institution are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
13. If pets or animals are allowed in the nursing care institution, pets or animals are:

a. Controlled to prevent endangering the residents and to maintain sanitation;
b. Licensed consistent with local ordinances; and
c. For a dog or cat, vaccinated against rabies;

14. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    c. Documentation of testing is retained for at least 12 months after the date of the test; and
15. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.

B. An administrator shall ensure that:
1. Smoking tobacco products is not permitted within a nursing care institution, and
2. Smoking tobacco products may be permitted outside a nursing care institution if:
    a. Signs designating smoking areas are conspicuously posted, and
    b. Smoking is prohibited in areas where combustible materials are stored or in use.

C. If a swimming pool is located on the premises, an administrator shall ensure that:
1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-403(C)(1)(e) is present in the pool area when a resident is in the pool area, and
2. At least two personnel members are present in the pool area when two or more residents are in the pool area.

R9-10-426. Physical Plant Standards

A. An administrator shall ensure that:
1. A nursing care institution complies with:
    a. The applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that were in effect on the date the nursing care institution submitted architectural plans and specifications to the Department for approval according to R9-10-104; and
    b. The requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in R9-10-104.01;
2. The premises and equipment are sufficient to accommodate:
    a. The services stated in the nursing care institution's scope of services, and

b. An individual accepted as a resident by the nursing care institution;

3. A nursing care institution is ventilated by windows or mechanical ventilation, or a combination of both;
4. The corridors are equipped with handrails on each side that are firmly attached to the walls and are not in need of repair;
5. No more than two individuals reside in a resident room unless:
   a. The nursing care institution was operating before October 31, 1982; and
   b. The resident room has not undergone a modification as defined in A.R.S. § 36-401;
6. A resident has a separate bed, a nurse call system, and furniture to meet the resident's needs in a resident room or suite of rooms;
7. A resident room has:
   a. A window to the outside with window coverings for controlling light and visual privacy, and the location of the window permits a resident to see outside from a sitting position;
   b. A closet with clothing racks and shelves accessible to the resident; and
   c. If the resident room contains more than one bed, a curtain or similar type of separation between the beds for privacy; and
8. A resident room or a suite of rooms:
   a. Is accessible without passing through another resident's room; and
   b. Does not open into any area where food is prepared, served, or stored.

B. If a swimming pool is located on the premises, an administrator shall ensure that:

1. The swimming pool is enclosed by a wall or fence that:
   a. Is at least five feet in height as measured on the exterior of the wall or fence;
   b. Has no vertical openings greater that four inches across;
   c. Has no horizontal openings, except as described in subsection (B)(1)(e);
   d. Is not chain-link;
   e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
   f. Has a self-closing, self-latching gate that:
      i. Opens away from the swimming pool,
      ii. Has a latch located at least 54 inches from the ground, and
      iii. Is locked when the swimming pool is not in use; and
2. A life preserver or shepherd's crook is available and accessible in the pool area.

C. An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (B)(1) is covered and locked when not in use.

R9-10-427. Quality Rating

A. As required in A.R.S. § 36-425.02(A), the Department shall issue a quality rating to each licensed nursing care institution based on the results of a compliance inspection.

B. The following quality ratings are established:

1. A quality rating of "A" for excellent is issued if the nursing care institution achieves a score of 90 to 100 points,
2. A quality rating of "B" is issued if the nursing care institution achieves a score of 80 to 89 points,
3. A quality rating of "C" is issued if the nursing care institution achieves a score of 70 to 79 points, and
4. A quality rating of "D" is issued if the nursing care institution achieves a score of 69 or fewer points.

C. The quality rating is determined by the total number of points awarded based on the following criteria:

1. Nursing Services:
   a. 15 points: The nursing care institution is implementing a system that ensures residents are provided nursing services to maintain the resident's highest practicable physical, mental, and psychosocial well-being according to the resident's comprehensive assessment and care plan.
   b. 5 points: The nursing care institution ensures that each resident is free from medication errors that resulted in actual harm.
   c. 5 points: The nursing care institution ensures the resident's representative is notified and the resident's attending physician is consulted if a resident has a significant change in condition or if the resident is in an incident that requires medical services.
2. Resident Rights:
   a. 10 points: The nursing care institution is implementing a system that ensures a resident's privacy needs are met.
   b. 10 points: The nursing care institution ensures that a resident is free from physical and chemical restraints for purposes other than to treat the resident's medical condition.
   c. 5 points: The nursing care institution ensures that a resident or the resident's representative is allowed to participate in the planning of, or decisions concerning treatment including the right to refuse treatment and to formulate a health care directive.
3. Administration:
   a. 10 points: The nursing care institution has no repeat deficiencies that resulted in actual harm or immediate jeopardy to residents that were cited during the last compliance inspection or a

complaint investigation conducted between the last compliance inspection and the current compliance inspection.

b. 5 points: The nursing care institution is implementing a system to prevent abuse of a resident and misappropriation of resident property, investigate each allegation of abuse of a resident and misappropriation of resident's property, and report each allegation of abuse of a resident and misappropriation of resident's property to the Department and as required by A.R.S. § 46-454.

c. 5 points: The nursing care institution is implementing a quality management program that addresses nursing care institution services provided to residents, resident complaints, and resident concerns, and documents actions taken for response, resolution, or correction of issues about nursing care institution services provided to residents, resident complaints, and resident concerns.

d. 1 point: The nursing care institution is implementing a system to provide social services and a program of ongoing recreational activities to meet the resident's needs based on the resident's comprehensive assessment.

e. 1 point: The nursing care institution is implementing a system to ensure that records documenting freedom from infectious pulmonary tuberculosis are maintained for each personnel member, volunteer, and resident.

f. 2 points: The nursing care institution is implementing a system to ensure that a resident is free from unnecessary drugs.

g. 1 point: The nursing care institution is implementing a system to ensure a personnel member attends in-service education according to policies and procedures.

4. Environment and Infection Control:

a. 5 points: The nursing care institution environment is free from a condition or situation within the nursing care institution's control that may cause a resident injury.

b. 1 point: The nursing care institution establishes and maintains a pest control program that complies with A.A.C. R3-8-201(C)(4).

c. 1 point: The nursing care institution develops a written disaster plan that includes procedures for protecting the health and safety of residents.

d. 1 point: The nursing care institution ensures orientation to the disaster plan for each personnel member is completed within the first scheduled week of employment.

e. 1 point: The nursing care institution maintains a clean and sanitary environment.

f. 5 points: The nursing care institution is implementing a system to prevent and control infection.

g. 1 point: An employee cleans the employee's hands after each direct resident contact or when hand cleaning is indicated to prevent the spread of infection.

5. Food Services:

a. 1 point: The nursing care institution complies with 9 A.A.C. 8, Article 1, for food preparation, storage and handling as evidenced by a current food establishment license.

b. 3 points: The nursing care institution provides each resident with food that meets the resident's needs as specified in the resident's comprehensive assessment and care plan.

c. 2 points: The nursing care institution obtains input from each resident or the resident's representative and implements recommendations for meal planning and food choices consistent with the resident's dietary needs.

d. 2 points: The nursing care institution provides assistance to a resident who needs help in eating so that the resident's nutritional, physical, and social needs are met.

e. 1 point: The nursing care institution prepares menus at least one week in advance, conspicuously posts each menu, and adheres to each planned menu unless an uncontrollable situation such as food spoilage or non-delivery of a specified food requires substitution.

f. 1 point: The nursing care institution provides food substitution of similar nutritive value for residents who refuse the food served or who request a substitution.

D. A nursing care institution's quality rating remains in effect until a subsequent compliance inspection or complaint investigation is conducted by the Department except as provided in subsection (E).

E. If the Department issues a provisional license, the current quality rating is terminated. A provisional licensee may submit an application for a substantial compliance inspection. If the Department determines that, as a result of a substantial compliance inspection, the nursing care institution is in substantial compliance, the Department shall issue a new quality rating according to subsection (C).

F. The issuance of a quality rating does not preclude the Department from seeking a civil penalty as provided in A.R.S. § 36-431.01, or suspension or revocation of a license as provided in A.R.S. § 36-427.

New Statutory Requirements for Rules in 9 A.A.C. 10, Article 4

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.

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.

7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

36-407.02. Health care institutions; clergy visitation; health and safety precautions; immunity; civil action; definitions

A. If a health care institution's visitation policy allows in-person visitation of any kind, the health care institution must allow a clergy member to visit a resident who requests an in-person visit or consents to be visited in person for religious purposes by the clergy member, including during a declared state of emergency. If a resident is unable, due to dementia or a similar cognitive impairment, to request an in-person visit or to consent to be visited in person by a clergy member for religious purposes, the request or consent must be made or given by the resident's legal representative.

B. Notwithstanding any other provision in this chapter, when a resident's death is imminent, a health care institution must allow a clergy member to visit the resident in person for religious purposes if either of the following applies:

1. The resident requests or consents to be visited by the clergy member.

2. The resident's legal representative requests that the resident be visited by the clergy member.

C. A health care institution may require clergy to comply with reasonable health and safety precautions, including undergoing health screenings and wearing personal protective equipment, that are imposed by the health care institution in connection with in-person visitation for preventing the spread of communicable diseases. If such a requirement would substantially burden the clergy member's free exercise of religion while carrying out the religious purpose for which the clergy member is visiting while with the resident in the resident's room or visiting area designated by the health care institution, the health care institution may require compliance with such precautions only if compliance in that instance furthers a compelling interest and the health care institution imposes the least restrictive burden on the clergy member's exercise of religion. Notwithstanding any other provision of this chapter, a health care institution may restrict visits of a clergy member who fails a health screening measure or tests positive for a communicable disease.

D. A health care institution and its employees and contractors are not liable to a person visiting a resident or to a resident of the health care institution for civil damages for injury or death due to actual or alleged exposure to a communicable disease resulting from or related to a visitation in compliance with this section unless it is proven by clear and convincing evidence that the health care institution failed to substantially comply with the health care institution's applicable health and safety precautions. The immunity prescribed in this subsection does not apply to any act or omission unless there is clear and convincing evidence that the act or omission constitutes gross negligence or wilful or wanton misconduct.

E. A person or religious organization may bring a civil action against a health care institution alleging a violation of this section. Any person that successfully asserts a claim or defense under this section may recover declaratory relief, injunctive relief, reasonable attorney fees and costs and any other appropriate relief.

F. For the purposes of this section:

1. "Health care institution" has the same meaning prescribed in section 36-420.

2. "Resident" means a person living at or receiving inpatient services from a health care institution.

36-411. Residential care institutions; nursing care institutions; home health agencies; fingerprinting requirements; exemptions; definitions

A. Except as provided in subsection F of this section, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies, contracted persons of residential care institutions, nursing care institutions or home health agencies or volunteers of residential care institutions, nursing care institutions or home health agencies who provide medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have valid fingerprint clearance cards that are issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty working days of employment or beginning volunteer work or contracted work.

B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.

C. Owners shall make documented, good faith efforts to:

1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.

2. Verify the current status of a person's fingerprint clearance card.

D. An employee, an owner, a contracted person or a volunteer or a facility on behalf of the employee, the owner, the contracted person or the volunteer shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work or volunteer service.

E. Except as provided in subsection F of this section, a residential care institution, nursing care institution or home health agency shall not allow an employee to continue employment or a volunteer or contracted person to continue to provide medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services if the person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1, has been denied approval pursuant to this section before May 7, 2001 or has had a fingerprint clearance card suspended or revoked.

F. An employee, volunteer or contractor of a residential care institution, nursing care institution or home health agency who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision is exempt from the fingerprinting requirements of this section if the person provides medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services to residents or patients while under the direct visual supervision of an owner or employee who has a valid fingerprint clearance card.

G. If a person's employment record contains a six-month or longer time frame during which the person was not employed by any employer, a completed application with a new set of fingerprints shall be submitted to the department of public safety.

H. For the purposes of this section:

1. "Direct supportive services":

(a) Means services other than home health services that provide direct individual care and that are not provided in a common area of a health care institution, including:

(i) Assistance with ambulating, bathing, toileting, grooming, eating and getting in and out of a bed or chair.

(ii) Assistance with self-administration of medication.

(iii) Janitorial, maintenance, housekeeping or other services provided in a resident's room.

(iv) Transportation services, including van services.

(b) Does not include services provided by persons contracted directly by a resident or the resident's family in a health care institution.

2. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

3. "Home health services" has the same meaning prescribed in section 36-151.

36-413. Nutrition and feeding assistants; training programs; regulation; civil penalty; definition

A. The department may adopt rules to prescribe minimum standards for training programs for nutrition and feeding assistants in licensed skilled nursing facilities, including instructor qualifications, and may grant, deny, suspend and revoke approval of any training program that violates these standards. These standards must include:

1. Screening requirements.

2. Initial qualifications.

3. Continuing education requirements.

4. Testing requirements to assure competency.

5. Supervision requirements.

6. Requirements for additional training based on patient needs.

7. Maintenance of records.

8. Special feeding requirements based on level of care.

B. Pursuant to section 36-431.01, the department may impose a civil penalty on a training program that violates standards adopted by the department.

C. If the department adopts standards for training programs pursuant to subsection A of this section, the department, as part of its routine inspection of a health care facility that provides a training program, shall determine the facility's compliance with these standards.

D. For the purposes of this section, "nutrition and feeding assistant" has the same meaning as paid feeding assistant as defined in 42 Code of Federal Regulations part 483 and section 488.301.

36-420. Health care institutions; cardiopulmonary resuscitation; first aid; immunity; falls; definition

A. Each health care institution and the health care institution's respective employees have an affirmative duty of care for their residents as prescribed in subsection B of this section.

B. Each health care institution:

1. Shall initiate cardiopulmonary resuscitation in accordance with its certification training for cardiopulmonary resuscitation before the arrival of emergency medical services, to a resident who is nonresponsive or has a cessation of normal respiration. The cardiopulmonary resuscitation shall be in accordance with that resident's advance directives, if known. Staff who are certified in cardiopulmonary resuscitation shall be available at all times.

2. Shall provide appropriate first aid in accordance with its certification training for first aid before the arrival of emergency medical services to a resident who is in distress and to a noninjured resident who has fallen, appears to be uninjured and is unable to reasonably recover independently. The first aid shall be in accordance with the resident's advance directives, if known. Staff who are certified in first aid shall be available at all times.

3. May not have, establish or implement policies that prevent employees from providing appropriate cardiopulmonary resuscitation and first aid.

C. A health care institution that renders cardiopulmonary resuscitation or first aid as described in subsection B of this section is not liable for any civil damages as the result of any act or omission by the person rendering such care. This liability exclusion applies only if the cardiopulmonary resuscitation or first aid is rendered in good faith and consistent with cardiopulmonary resuscitation or first aid certification standards, as applicable. This liability exclusion does not apply to a person who acts with gross negligence while rendering care.

D. A person who in good faith renders first aid to a person who has fallen is not liable for any civil damages as the result of any act or omission by the person rendering the first aid to the fallen person, unless the person acted with

gross negligence while rendering the first aid, if the person rendering aid acted under any of the following circumstances:

1. At the direction of the emergency dispatch operator.

2. To prevent further imminent and serious injury to the fallen person.

3. The fallen person appeared to be uninjured, stated that the person was not injured and requested assistance.

E. The department shall enforce this section consistent with the centers for medicare and medicaid services regulations for health care institutions that are subject to those regulations.

F. For the purposes of this section, "health care institution" means an assisted living center, an assisted living facility, an assisted living home, hospice, a nursing care institution or a residential care institution that is licensed pursuant to this chapter.

36-420.01. Health care institutions; fall prevention and fall recovery; training programs; definition

A. Each health care institution shall develop and administer a training program for all staff regarding fall prevention and fall recovery. The training program shall include initial training and continued competency training in fall prevention and fall recovery. A health care institution may use information and training materials from the department's Arizona falls prevention coalition in developing the training program.

B. For the purposes of this section, "health care institution" has the same meaning prescribed in section 36-420.

36-425.02. Nursing care institutions; quality rating; issuance of license

A. The department shall issue to each licensed nursing care institution a quality rating based on the results of a licensure survey.

B. The director may determine the period of time for which a license issued to a nursing care institution is valid according to the quality rating category to which the institution is assigned, except that no license shall be valid for more than three years from the date of issuance.

36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

ARIZONA EXPOSITION AND STATE FAIR BOARD
Title 3, Chapter 12, Articles 1-3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: **Mar 6, 2023**

SUBJECT: **ARIZONA EXPOSITION AND STATE FAIR BOARD**
Title 3, Chapter 12, Articles 1-3

Summary

This Five Year Review Report from the Arizona Exposition and State Fair Board covers rules in Title 3, Chapter 12, Articles 1 (Definitions), Article 2 (Game Descriptions and Standards) and Article 3 (Concessionaires). The rules in these articles have been in place since 1987 and were implemented to protect the public's safety and welfare. These rules govern the types of games offered, the conduct of the concessionaires, the dollar value of prizes offered, and how often a player may win each game's top prize.

Proposed Action

The Board has no current plans to amend its rules. The Board indicates that the rules are working well and accomplish their intended purposes. The rules protect the public's safety and welfare, as well as regulate all games played during the Arizona State Fair. The rules were last amended in 2002.

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

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:**

   The Board states that the impact the rules have had on the public and game owners is substantially as predicted in the 2002 impact statement. The Board drafted the rules with existing industry standards in mind; hence, the only required expenditures to game owners come in the form of uniforms and signage. Most signage is provided by the Board.

   Stakeholders are identified as patrons of the State Fair, game owners, and the Board.

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?**

   According to the Board, these rules keep both game operators and the public safe from wrongful practices. The rules do so with little costs or recurring costs because the industry trend for at least fifteen to twenty years has been to require uniforms for employees. The Board states that no less intrusive alternative exists.

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

The Board indicates that they have not received any written criticisms of the rules in the last five years.

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

   The Board indicates that the rules are clear, concise, and understandable.

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

   The Board indicates that the rules are consistent with other rules and statutes.

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

   The Board indicates that the rules are effective in achieving its objectives.

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

   The Board states that 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?**

The Board indicates that the rules are not more stringent than corresponding federal law as there are no corresponding federal statutes.

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 Board indicates that none of the rules were adopted after July 29, 2010.

11. Conclusion

As mentioned above, the Board believes that the rules are working well and accomplish their intended purpose; they are clear, concise, and understandable and effective in achieving their objective. The Board has no plans to amend the rules. The report meets the requirements of A.R.S. § 41-1056 and Council staff recommend approval of this report.

January 25, 2023

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

RE: Five Year Rules Review Report

Dear Mrs. Sornsin:

Attached is the Arizona Exposition and State Fair Board ("Board") Five Year Rules Review report required by A.R.S. 41-1056. As required under A.R.S. 41-1056(A), the Board certifies that it is in compliance with A.R.S. 41-1091 regarding rules and substantive policy directory. If you have any questions, please call Wanell Costello at 602-257-7120..

Sincerely,

Wanell Costello
Executive Director

ARIZONA EXPOSITION AND STATE FAIR BOARD

FIVE-YEAR REVIEW REPORT TITLE 3, CHAPTER 12 ARTICLES 1-3

FOR THE GOVERNOR'S REGULATORY REVIEW COUNCIL (GRRC)

Submitted January 25, 2023

I. Introduction

The rules adopted by the Arizona Exposition and State Fair Board ("Board") regulate all games played during the Arizona State Fair (“Fair”). The rules serve the primary purpose of protecting the public's safety and welfare. Each game operator pays the Board for a space on the grounds during the Arizona State Fair. Payment is based on 25% of the total game sales. Because the Fair would not have any games unless the game operators make a profit, certain of the Board's rules protect the game owner from persons taking unfair advantage of the game. The rules have functioned well and accomplished their purposes since their adoption.

II. Identical Information Regarding Rules

The following information is identical for all of the Board's rules. Because the information is the same for each rule listed, it is not included in the analysis of the individual rules.

A. Statute Authorizing Rules

The Board adopted the rules contained in A.A.C. Title 3, Chapter 12 pursuant to A.R.S. sec. 3-1003 (A)(l0), a copy of which is attached to this report.

B. Effectiveness

The stated objective for all of the Agency's rules is effectively met.

C. Consistency

There are no other statutes and rules that apply to or conflict with these rules.

D. Enforcement

The rules are all enforced by Department of Public Safety officers trained regarding carnival games and by State Fair personnel. The rules are uniformly and fairly enforced and there have been no enforcement issues during the past five years.

E. Clarity, Conciseness and Understandability

In 2002, the Board amended the rules to correct certain minor stylistic problems and make the rules consistent with the Secretary of State's requirements. The rules remain clear and concise and both game owners and the public can easily understand the rules.

F. Criticisms

The Board has not received any written criticisms of any of its rules during the past five years.

G. Economic, small business and consumer impact comparison with the 2002 Rulemaking

The economic, small business and consumer impact statement prepared for the Board's 2002 Rulemaking is attached. The Board's analysis of the impact the rules have had on the public and the game owners is substantially as predicted in the 2002 impact statement. The rules continue to perform as indicated and because these rules have existed in one form or another for over 30 years, the economic impact is negligible.

H. Any analysis submitted shows that the rule's impact on the state's business competitiveness compares to the competitiveness of businesses in other states.

The Board has received no such analysis.

I. **The Board's progress toward completing the needed actions identified in the previous Five-year review report.**

The Board had no plans to amend its rules since the last rules review.

J. Agency's progress toward completing the needed actions identified in the previous five year rules report.

No actions were identified.

K. 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 regulate persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

These rules keep both game operators and the public safe from wrongful practices. The rules do so with little costs or recurring costs because the industry trend for at least fifteen to twenty years has been to require uniforms by employees.

L. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of federal law.

No federal law applies to the Board's rules.

M. For rules made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. 41-1037.

None of the rules were made after July 29, 2010.

N. Planned course of action.

The Board has no current plans to amend its rules. The rules are working well and accomplish their intended purposes.

III. Analysis of Individual Rules

A. R3-12-101- Definitions

Objective

The objective is to ensure that all those using or interpreting the rules do so using the consistent and well defined terms.

B. R3-12-201-Hoop and Ring Toss Games

Objective

The objective is to set forth the types of hoop and ring toss games allowed at the Arizona State Fair and to regulate such games so that the games constitute a form of legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

C. R3-12-202- Dart Games

Objective

The objective is to set forth the types of dart games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

D. R3-12-203 -Ball Toss Games

Objective

The objective is to set forth the types of ball toss games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

E R3-12-204 - Shooting Games

Objective

The objective is to set forth the types of shooting games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

F R3-12-205- Coin Games

Objective

The objective is to set forth the types of coin games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

G. R3-12-206- Other Games

Objective

The objective is to set forth all other types of games allowed at the Arizona State Fair and to regulate such games so that the games constitute legal gambling as defined in A.R.S. Title 13. This rule also protects the public by strictly defining the allowed games to prevent unfair modifications to the games.

H. R3-12-301- Safety

Objective

The objective is to protect the consumer and ensure a safe environment for those attending the Arizona State Fair.

I. R3-12-302 - Posting Prizes and Game Standards

Objective

The objectives are to ensure that all customers know the rules of each game played and to prevent game owners from modifying the game in the middle of play.

J. R3-12-303 - Prizes

Objective

The objective is to keep the Fairgrounds safe for all customers and provide players with an opportunity to win a quality prize for the money the consumer spends.

K. R3-12-304 - Valuable Prize Limit

Objective

The objective is to protect the concessionaire from highly successful players by limiting any player to one most valuable prize per game per day.

L. R3-12-305 - Lease Standards

Objective

The objective is to ensure that all games are booked in accordance with current Arizona State Fair policies.

M. R3-12-306- Uniforms

Objective

The objective is to ensure that all concessionaires are responsible for all their employees and that the employees are neat, clean and well kept.

N. R3-12-307 - Concession Location

Objective

The objective is to maintain the orderly movement of customers within the fairgrounds.

0. R3-12-308 - Sound Control

Objective

The objective is to provide a pleasant environment for customers and competing concessionaires on the fairgrounds.

P. R3-12-309 - Height and Line Designation

Objective

The objective is to provide customers with a fair opportunity to win at the games by ensuring playing distance uniformity for all players and to ensure public safety.

Signage: Most concessionaires and carnivals have uniform requirements in place. the Board provides most of the signs required.

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

Name: Wanell Costello

Address: 1826 W. McDowell Rd
Phoenix, AZ 85007

Telephone: 602-252-6771
Fax: 602-495-1302

2. Persons affected:

All patrons of the State Fair will benefit if those patrons choose to play games at the fair. Over one million people attend the fair annually.

Game owners also benefit because the rules build in protections against game experts taking more than one large prize per game per day. The current Carnival has fourteen game owners and the total number of games varies.

3. Cost benefit analysis:

   (a) To implementing agency - No costs exist. The benefit comes with ease of enforcement due to the clarity of the rules.

   (b) To political subdivisions - None.

   (c) To businesses affected - No costs exist. The benefit comes with ease of interpretation and fewer arguments with fair patrons due to the clarity of the rules.

4. Impact on employment:
   None.

5. Impact on small business:

   (a) Game owners contracting with the State Fair's carnival are subject to the rules.

   (b) No administrative costs exist because the Board made no changes to the rules. Because no changes were made, and no additional costs exist, the agency has no way to lessen an already negligible impact on the small businesses subject to the rules.

   (c) Private persons have no costs as a result of the new rules. Private persons will benefit from the clearer interpretation of the rules when disputes arise.

6. Effect on state revenues:

   The State Fair contracts with a single carnival for a price. The carnival then leases space to game owners. Consequently, negligible impact will exist regarding state revenue.

7. Less intrusive alternatives:

   The rules have no appreciable impact on anyone. Therefore, no less intrusive alternative exists.

TITLE 3. AGRICULTURE

CHAPTER 12. ARIZONA EXPOSITION AND STATE FAIR BOARD

Former Title 3, Chapter 12, Article 2, Section R4-12-201, renumbered to Title 3, Chapter 9, Article 3, Section R4-9-301; new Title 3, Chapter 12, Article 1, Section R3-4-101 renumbered from Title 3, Chapter 4, Article 1, Section R3-4-101; new Title 3, Chapter 12, Article 2, Sections R3-12-201 through R3-12-212, renumbered from Title 3, Chapter 4, Article 2, Sections R3-4-201 through R3-4-212 (Supp. 91-4).

(Authority: A.R.S. § 3-1003)

ARTICLE 1. DEFINITIONS

Section
R3-12-101. Definitions

ARTICLE 2. GAME DESCRIPTIONS AND STANDARDS

Article 2, consisting of Sections R3-12-201 through R3-12-212, repealed; new Article 2, consisting of Sections R3-12-201 through R3-12-206, made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

Section
R3-12-201. Hoop or Ring Toss Games
R3-12-202. Dart Games
R3-12-203. Ball Toss Games
R3-12-204. Shooting Games
R3-12-205. Coin Games
R3-12-206. Other Games
R3-12-207. Repealed
R3-12-208. Repealed
R3-12-209. Repealed
R3-12-210. Repealed
R3-12-211. Repealed
R3-12-212. Repealed

ARTICLE 3. CONCESSIONAIRES

Section
R3-12-301. Safety
R3-12-302. Posting Prizes and Game Standards
R3-12-303. Prizes
R3-12-304. Valuable Prize Limit
R3-12-305. Lease Standards
R3-12-306. Uniforms
R3-12-307. Concession Location
R3-12-308. Sound Control
R3-12-309. Height and Line Designation

ARTICLE 1. DEFINITIONS

R3-12-101. Definitions

In this Chapter, the following definitions apply unless the context requires otherwise:

"Arizona State Fair Games Inspector" or "Inspector" means any person employed by the Director to enforce this Chapter. The term includes the Midway Coordinator, the person employed by the Director to coordinate midway rides, concessions, and games and assist in placing equipment assigned to the midway.

"Board" means the Arizona Exposition and State Fair Board.

"Concession" means any business that sells merchandise or services, conducts games, or provides other entertainment regulated by the Board.

"Concessionaire" means any person who owns, operates, or leases a concession and includes any person acting as an agent of the concessionaire.

"Director" means the Executive Director of the Board or a Deputy Director if the Executive Director is unable to act.

"Game" means any concession that accepts payment for providing an activity of amusement.

"Location" means the stall, stand, booth, or site from which the concessionaire operates or sells merchandise or services, conducts games, or provides other entertainment.

"Person" has the meaning prescribed in A.R.S. § 1-215.

"Player" means any person who plays a game at the Fair, whether or not the person is attempting to win a prize.

"Prize" means an item won by a player after successful completion of a game's activity.

"State Fair" or "Fair" means the Arizona State Fair, an annual exposition conducted by the Board.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-101 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

ARTICLE 2. GAME DESCRIPTIONS AND STANDARDS

Article 2, consisting of Sections R3-12-201 through R3-12-212, repealed; new Article 2, consisting of Sections R3-12-201 through R3-12-206, made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-201. Hoop or Ring Toss Games

A. In General. A player tosses each hoop or ring over a target. The object of the game is for the hoop or ring to land on the target, with a portion of the target passing through the hoop or ring.

B. Specific Standards. A concessionaire shall:
1. Advise the player regarding the extent of the target that must pass through the hoop or ring; and
2. Ensure that hoops or rings of the same color at a location are the same size or advise the player of different sizes by posting signs or using color codes to denote different sizes.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Amended effective Sept. 9, 1988 (Supp. 88-3). Amended effective September 25, 1991 (Supp. 91-3). Renumbered from R3-4-201 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-202. Dart Games

A. General Standards. A concessionaire shall:
1. Ensure that the target area for metal-tip dart games is made of material that will accept and retain a metal tip dart;
2. Use darts with metal, velcro, or suction cup tips;
3. Ensure that darts are thrown by hand or propelled by a mechanical device;
4. Place the target at the back of the location, at least 3 feet but not more than 15 feet from the foul line;
5. Ensure that the target is stationary at all times; and

6. Construct the location in a manner that prevents darts from reaching adjoining locations or aisles.

B. Game Descriptions and Specific Standards

1. Balloon or Balloon Smash. The targets are inflated balloons. A player throws one or more darts to burst a predetermined number of balloons. If the player bursts the predetermined number of balloons with the darts, the player wins the designated prize.
2. Dart Throw. The targets are shapes of various sizes located on the target area. A player throws or propels darts individually at a target. If the player hits a predetermined target and the dart remains in or on that target, the player wins the designated prize.
3. Tic-Tac-Toe Dart. The target is a tic-tac-toe board located on the target area. If a player sticks a dart in each of 3 adjacent spaces on the tic-tac-toe board, either vertically, horizontally, or diagonally, the player wins the designated prize.
4. Add 'Em Up Darts. The target consists of numbered squares located on the target area. A concessionaire awards prizes based on the total score, calculated by adding the numbers on each square holding a dart. If a dart is stuck on a line, a player may throw the dart again.

Historical Note

Adopted effective September 25, 1991 (Supp. 91-3). Renumbered from R3-4-202 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-203. Ball Toss Games

A. General Standards. A concessionaire shall ensure that:

1. Each ball used at a location is the same weight and size; and
2. Targets are either of identical weight and size or color-coded to show target differences, or any target difference is described on a sign.

B. Game Descriptions and Specific Standards

1. Milk Bottle. A player tosses or throws a specified number of balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off a raised platform as designated by the concessionaire. A Concessionaire may vary the number of bottles and balls used in each game. A concessionaire shall ensure that:
   a. The bottles are constructed of wood, metal, plastic, or a combination of these materials;
   b. There are no floating or loose weights in bottles; and
   c. The weight of each bottle does not exceed 7.5 pounds.
2. Milk Can. If a player tosses a ball into the opening of a milk can, cone, or similar object, the player wins the designated prize.
3. Football and Tire. If a player tosses or throws a football through a stationary tire or hoop, the player wins the designated prize.
4. Basketball and Hoop. If a player tosses or throws a basketball through a basketball or similar hoop, the player wins the designated prize.
5. Bushel Basket. If a player tosses each ball into a bushel basket or similar object mounted on a stationary backdrop at a fixed angle, and the ball stays in the basket, the player wins the designated prize. If a ball hits the rim and stays in the basket, the player wins the designated prize.
6. Cat, Circle, Star, or Diamond. If a player tosses each ball into a simulated cat's mouth or a round, diamond-shaped, or star-shaped hole, the player wins the designated prize.
7. Ping-Pong Ball and Floating Target. A player tosses each ping-pong ball into a dish, saucer, cup, or ashtray floating in water. If a predetermined number of balls remain in the dishes, saucers, cups, or ashtrays, the player wins the designated prize. A concessionaire shall ensure that dishes, saucers, cups, or ashtrays are:
   a. Not stacked on top of each other; and
   b. In the water and floating at water level.
8. Break the Plate, Record, or Bottle. A player tosses or throws a specified number of balls at a plate, phonograph record, or bottle. The player wins a designated prize based upon the number of targets broken.
9. Punk Rack. The targets for this game are rows of dolls or cats on a ledge at the back of the location. If the player knocks the correct number of dolls or cats over or off of the ledge, the player wins the designated prize. A concessionaire shall ensure that:
   a. The dolls or cats are filled with sawdust, polystyrene, cotton, or a similar material;
   b. The hair protruding from the side of the dolls or cats does not exceed three inches.
10. Rolldown. The player rolls a specified number of balls down an alley. The object of the game is to place the balls in numbered slots at the end of the alley. The concessionaire calculates the total score by adding the numbers of the slots that contain a ball at the end of the game. If a player achieves a score above or below a predetermined number, the player wins the designated prize. A concessionaire shall ensure that the alley surface is smooth.
    a. 3-Pin. The player rolls a specified number of balls down an alley. The object of the game is to knock over all three pins sitting on designated spots in a triangle. A concessionaire shall:
       i. Set the triangle with the two front pins on a line that is perpendicular to a line coming from the player;
       ii. Set the front pins so the ball may knock down both pins if the player's roll is between the pins;
       iii. Mark the alley with a grid and spots for the pins;
       iv. Ensure that the designated spots are no larger than the base of the pins; and
       v. Ensure that the alley is a smooth, level surface no more than six feet long.
    b. Sidewinder. The object of the game is for the player to control a ball rolling down a downward-slanted, multi-curved alley by tilting the alley to one side or the other with a steering wheel. The player wins by putting the ball through a hole at the end of the alley without the ball falling off the alley. Side rails may be used on part of the alley to help the player control the ball. A concessionaire shall ensure that the alley is a smooth, flat surface with a downward angle of no more than 15 degrees.
11. Skee Ball. A player rolls a specified number of balls up a mechanical alley into numbered targets. A mechanical scorer or computer calculates the score to determine whether the player wins the designated prize. A concessionaire shall ensure that the alley surface is smooth.
12. Bank Ball. The object of the game is for a player to bank a ball off the front surface of a sandwich board into a basket located in front of the board's legs. The player shall use only the front surface of the board. A concessionaire shall:

a. Ensure that the board is a sandwich board that, together with its legs, is not more than six feet high;
b. Ensure that there are two chains attached to the legs to secure the board when it is opened to the standing position;
c. Secure the basket to the legs of the sandwich board so that the basket is a minimum of nine inches in front of the board's legs; and
d. Ensure that the board surface is smooth.

13. Kiddie Toss. A player throws a velcro-covered ball at a velcro target. If the player hits the target, the player wins the designated prize. If a ball does not stick to a target, the player may throw again with a different ball.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-203 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-204. Shooting Games

A. In General. A player uses a weapon to shoot a target at the rear of the location. The target may be stationary or mobile.
B. Game Descriptions and Specific Standards
1. Shoot-Out-The-Star or Machine Gun. A concessionaire provides a player with an automatic air pellet gun and 100 pellets to shoot at a star-shaped target. If the player shoots out the entire target, the player wins the designated prize. The concessionaire shall ensure that the star is not more than 1 and 1/4 inch from point to point.
2. Water Racer. The game involves group competition. A player wins a prize based on the number of players competing. Each player, using a water pistol, shoots water into a target. Water striking the target causes a balloon to inflate or advances an object to ring a bell. The player who bursts the balloon or rings the bell first is the winner.
3. Rapid Fire. The game involves group competition. Each player uses an electronic pistol to shoot at a target. Hits on the target increase the player's score. The first player to reach a predetermined score is the winner.
4. Cork Gallery. A player uses a cork gun to shoot at targets located on a shelf. If the player knocks a target over or off the shelf, the player wins a prize. The prize is based on the target knocked over or off the shelf or on the number of targets knocked over or off the shelf. A concessionaire shall ensure that the base of each target has a uniform shape, front and rear.
5. Gun Ball. A player shoots balls at stationary targets in the location. The player wins by knocking down all the targets. A concessionaire shall ensure that:
a. The balls are of identical size and weight; and
b. The targets are of identical size and weight.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-204 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-205. Coin Games

A. In General. A player uses a token or coin of U.S. denomination. The player pitches or tosses the coin so that it lands and remains on or in a target within the location. The target may be stationary or mobile.
B. Game Descriptions and Specific Standards
1. Spot Pitch or Lucky Strike. A player pitches a coin at colored spots located on a table in the center of the location. If the player pitches the coin so that it either touches or stays inside of a spot, the player wins the designated prize.
2. Plate Pitch. A player pitches a coin onto a glass plate. If the coin remains on the plate, the player wins the designated prize.
3. Glass Pitch. A player pitches a coin into or onto bowls, ashtrays, dishes, or glasses. If the coin remains in one of the top "target" glass items, the player wins that item.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-205 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-206. Other Games

A. Tip-Em-Up Bottle. A concessionaire provides a player with a pole that has a string attached to it at one end. A hoop or ring is attached to the other end of the string. If the player, using this "fishing" pole with a hoop or ring, raises a bottle lying on its side to an upright position, the player wins the designated prize.
B. Hi-Striker. A player, using a wooden or metal maul, strikes a lever that causes a metal weight to rise on a guide line or track and ring a bell. If the player rings the bell a predetermined number of times, the player wins the designated prize.
C. Rope Ladder. A player climbs a rope ladder that is anchored at both ends, but swivels. If the player rings the bell or buzzer at the top of the ladder, the player wins the designated prize.
D. Whac-A-Mole. A player hits as many animated moles as possible with a rubber mallet in a five hole target area. The animated moles pop up and down at random in the holes. The first player to hit a predetermined number of moles wins the designated prize.
E. Speed Bump Bowling. A player rolls a bowling ball or similar ball over a hump in a track. If the player rolls the ball to the other side of the hump and the ball remains there, the player wins the designated prize.
F. Speedball Radar. A player throws a specified number of balls past a radar device to establish the speed at which the balls are thrown. This enables the player to estimate the speed of the ball. If the player accurately estimates the speed of the last ball thrown, the player wins the designated prize. A concessionaire shall ensure that the radar device is mounted in a stationary position.
G. Horse Race Derby. A player advances a horse by shooting or rolling a ball into a target area. The faster and more skillfully the player shoots or rolls the ball into the target area, the faster the player's horse will run. If the player's horse is the first to cross the finish line, the player wins the designated prize.
H. Shuffleboard. A player pushes a specified number of pucks down a shuffleboard alley to knock over pins at the end of the alley. If the player knocks down all of the pins, the player wins the designated prize.
I. Beanbag. A player tosses or throws a specified number of beanbags or simulated beanbag at cans, bottles, or other objects on a raised platform. If the player knocks one or more objects off of the raised platform or tips one or more targets over, the player wins the designated prize.
J. Soccer Kick. If a player kicks a soccer ball through a hole in the target area, the player wins the designated prize.
K. Pool Table. A player using a pool cue and solid white cue ball is given a fixed number of chances to shoot a fixed number of multicolored balls into targets or pockets on a pool table. The number of chances and multicolored balls used is based on the type of prize offered. The first shot is to break or separate the multicolored balls from their racked position on the table. Dur-

ing the first shot, any multicolored balls that strike targets or fall into pockets count toward the player's total score. After the first shot, the player shall specify the colored ball or balls and the target or pocket for the ball or balls. If, after the first shot, the specified ball or balls do not strike the target or fall into the pocket specified, the player loses the game. If the solid white cue ball strikes a target or falls into a pocket on any shot, the player loses the game. If the player shoots all balls on the table into the specified targets or pockets using the allotted number of successive shots, the player wins the designated prize. A concessionaire shall ensure that the pool table surface is smooth, level, and in good repair.

L. Put Out The Light. A player drops five metal plates measuring four inches in diameter onto a target surface measuring six and 3/8 inches in diameter in an effort to completely cover the target surface. The player drops the plates from a designated height, marked by an electric beam that triggers a buzzer. The buzzer sounds to alert the player and concessionaire of any height violation. If the buzzer sounds and the player drops a plate, the player loses the game. Once dropped, plates are not moved until the concessionaire makes a final determination of a winner. If the player completely covers the surface with the plates, the player wins the designated prize. The concessionaire may change surface and disk size in proportion to the measurements listed above. These changes are subject to the approval of the Arizona State Fair Games Inspector who shall rule on the requested changes immediately.

M. Fisharama. A concessionaire provides a player with a pole that has a string attached to it at one end. A magnet is attached to the other end of the string. The player uses the magnet to catch a predetermined target that is visually distinguishable from other targets floating in a water-filled elliptic trough. If the player catches the predetermined target, the player wins the designated prize. The concessionaire shall ensure that the magnets can stick to and pick up each of the potential targets.

N. Flipgame. A player propels an object into a target by using a mechanical launching device. The player positions the object on the launching device and then propels the object by striking the device with a rubber mallet. If the player flips the object into the target, the player wins the designated prize. The target may be stationary or mobile.

O. Wacky Wire. A player passes a metal wire with a minimum one-inch circular opening in the middle of the wire down a curved wire moving clockwise during play. The player wins by passing the wire down to the base of the moving curved wire without touching the moving curved wire. A buzzer signifies any touch by a player.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-206 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-207. Repealed

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-207 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-208. Repealed

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-208 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-209. Repealed

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-209 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-210. Repealed

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-210 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-211. Repealed

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-211 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-212. Repealed

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4). Renumbered from R3-4-212 (Supp. 91-4). Section repealed by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

ARTICLE 3. CONCESSIONAIRES

R3-12-301. Safety

A. A concessionaire shall:
   1. Operate a concession in a safe manner; and
   2. Use equipment that is in good, safe operating condition.

B. A concessionaire shall use material in the construction of the concession that is in good, safe condition for the concession's intended use.

C. If an Arizona State Fair Games Inspector believes there is a hazard in concession operation, equipment, or construction, or any component of the equipment or construction materials, the Inspector shall close the concession until satisfied that the concessionaire has corrected the hazardous condition.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-302. Posting Prizes and Game Standards

A. For every game a concessionaire shall conspicuously post, during all times of operation, a sign stating:
   1. The price of the game;
   2. Clear game instructions and standards; and
   3. The exact task the player is required to complete to win the designated prize.

B. A concessionaire shall use a sign made of wood, metal, masonite, or a similar sturdy material, with block lettering of a contrasting color, at least two inches high.

C. The concessionaire shall not charge more than one price to play a game, except that the concessionaire may charge a separate price for children. If the concessionaire charges a separate price for children, the concessionaire shall post a sign that states the maximum age for the children's price.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-303. Prizes

A. A concessionaire shall display all prizes while the game is open to the public.

B. A concessionaire shall not:
1. Award prizes that are not displayed;
2. Award cash prizes;
3. Buy back for cash or any combination of prizes, articles, tickets, numbers, or other medium of exchange, any prize won by a player at the Fair; or
4. Offer the following merchandise prizes:
   a. Weapons of any kind, such as firearms, knives, whips, martial art items, bike chains, studded jewelry and accessories, water pistols or guns, or pea or bean shooters;
   b. Fireworks of any kind;
   c. Handcuffs or fingercuffs;
   d. Melted glass bottles;
   e. Items that are inconsistent with the state's interest in providing entertainment for families and children;
   f. Eyeglasses, other than sunglasses;
   g. Medicine or drugs of any kind; or
   h. Fowl or animals, except goldfish.

C. An Arizona State Fair Games Inspector may prohibit other prizes, based on prize or merchandise:
1. Safety;
2. Legality; or
3. Value.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-304. Valuable Prize Limit

A. A concessionaire with a valuable prize may request authorization from the Board to limit the number of valuable prizes any player may win to one prize from each game location during each day of the Fair. The concessionaire shall make the request before the Fair opens. The Board shall authorize the valuable prize limit if:
1. The wholesale value of the prize is $25.00 or more; and
2. The prize is won by successfully completing the game's activity once.

B. If authorized, the concessionaire shall post a sign at the game location that indicates the valuable prize limit.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-305. Lease Standards

A. A person shall not operate a concession at the Fair without first leasing a location for the concession from the Board.

B. An applicant shall provide a document, incorporated by a reference in the lease, that lists the dollar value and total number of each type of prize merchandise that will be offered at the Fair.

C. An applicant shall provide a document, incorporated by a reference in the lease, that lists all prices that will be charged for merchandise, services, games, or other entertainment provided to patrons of the Fair.

D. Any person may apply to lease a location at the Fair for a game. An applicant shall send a letter to the Board that contains the name of the game, a description of the game, location requirements, the exact location for all game components, the applicant's name and address, and a current photograph of the stand. A lease is nontransferable. The lease for each game applies only to the concessionaire who enters into the lease.

E. The Board shall determine the rent to be paid under each game concession lease and ensure that this dollar amount is specified in the lease. For front stand games, the rent is computed by multiplying the footage requirements for the front of the game space by a dollar amount determined by the Board and adding any insurance and utility costs. For center stand games, the rent is computed by multiplying the footage requirements for the front and one side of the game space by a dollar amount determined by the Board and adding any insurance and utility costs. The Board shall not use less than a 10-foot minimum footage requirement in its rent calculations.

F. A separate lease is required for each game concession at the Fair unless:
1. All games are in the same location;
2. The games are not separated by a wall or partition;
3. The games are identical;
4. The prizes for each game are identical; and
5. The price for each game is identical;

G. Upon consideration of the factors in subsections (F)(1) through (F)(5), the Board may include up to 10 games under one lease.

H. A concessionaire shall operate during the hours specified in the lease.

I. The Board and the concessionaire may mutually agree to modify the terms of a lease and shall memorialize any modification in an amended lease.

J. The Board shall not lease a location to an applicant if the applicant makes a material misrepresentation on the application or in documents submitted with the application. If a concessionaire has made a material misrepresentation to the Board, the Board shall cancel the concessionaire's lease, using the applicable provision in the lease, and remove the concession from the Fair.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-306. Uniforms

A concessionaire shall supply uniforms for agents. A concessionaire shall ensure that agents keep the uniforms in a clean and serviceable condition and wear the uniforms during the hours of the Fair.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-307. Concession Location

A concessionaire shall not sell merchandise or services, conduct games, or provide other entertainment more than four feet from the concession location.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-308. Sound Control

A concessionaire operating any loudspeaker at the Fair shall control the volume so that the loudspeaker does not interfere with other concessions or adversely affect Fair patrons. For the game concession area, the maximum decibel level for a loudspeaker is 90.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

R3-12-309. Height and Line Designation

A concessionaire shall designate a line behind which players stand to play a game. If the game is trailer mounted, an Inspector shall

designate the height of the base on which the game is set, based upon safety considerations of R3-12-301 and fairness to the player.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 4838, effective December 27, 2002 (Supp. 02-4).

Arizona Revised Statutes

3-1003. Arizona exposition and state fair board; powers and duties; compensation of employees

A. The Arizona exposition and state fair board shall:

1. Have exclusive custody and direction of all state fair property, construct and maintain necessary improvements in connection therewith, and assist in raising funds therefor.

2. Direct and conduct state fairs, exhibits, contests and entertainments for the purposes of promoting and advancing the pursuits and interests of the several counties and of the state, and of producing sufficient revenue to defray the expenses incurred by the board in conducting such events.

3. Charge entrance fees and gate money, and temporarily lease stalls, stands, booths and sites for the purpose of defraying the expenses incurred.

4. Give prizes or premiums for exhibits and contests which are presented or sponsored by the board in connection with the annual state fair.

5. Subject to title 41, chapter 4, article 4, employ an executive director, coliseum manager and comptroller.

6. Delegate to the executive director any of the administrative functions, powers or duties that the board believes the executive director can competently, efficiently and properly perform.

7. When necessary in connection with business of the board, appoint fair or ground marshals with the authority of peace officers.

8. Have the power to promote, co-promote or lease the state fairgrounds for such events, exhibitions, entertainments or other purposes it deems proper.

9. Have power to accept donations of money or other property from any source, and expend them in accordance with directions of the donor. Monies received pursuant to this paragraph shall not be placed in the general fund.

10. Adopt rules necessary to carry out the provisions of this chapter.

11. Prohibit the issuance of a free pass, ticket or box to any person for any activity at the Arizona coliseum and exposition center, except that this paragraph shall not apply to the state fair and any lessees of the Arizona coliseum and exposition center.

B. The board may exempt from subsection A, paragraphs 2 and 3 such educational, agricultural and mineral exhibits as in its opinion are in the best interest of the state and not contrary to any outstanding obligations the board might have incurred.

C. Compensation of all employees shall be as determined pursuant to section 38-611.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 8, Article 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: March 14, 2023

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 8, Article 6

Summary

This Five-Year Review Report (5YRR) from the Department of Transportation (Department) relates to eleven (11) rules in Title 17, Chapter 8, Article 6 regarding Motor Fuel Refunds. Specifically, these rules specify requirements to qualify for a refund on taxes paid on motor fuel in various circumstances, as well as the timeframes to file an application for such refunds.

In the prior 5YRR for these rules, which was approved by the Council in April 2018, the Department proposed to amend rules by expedited rulemaking. The Department's Notice of Final Expedited Rulemaking updating the rules pursuant to the prior proposed course of action was approved by the Council on December 4, 2018. A detailed list of amendments completed in the expedited rulemaking are outlined in Section 10 of the Department's report.

Proposed Action

In the current report, the Department intends to amend three rules that are not enforced as written or clear, concise, and understandable, as outlined in more detail below. The Department states it plans to request approval from the Governor's Office, pursuant to A.R.S. § 41-1039,

upon approval of this report, and intends to submit the Notice of Final Expedited Rulemaking to the Council by the end of October 2023.

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

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 indicates that the rules were last amended by expedited rulemaking in 2018; and an Economic, Small Business and Consumer Impact Statement was not required. The Department further states that the last full economic, small business and consumer impact statement was for the rulemaking completed in 2008. The Department believes that these rules have remained essentially the same as indicated in the 2008 economic, small business and consumer impact statement.

Stakeholders include the Department and persons or licensees seeking to obtain a refund of certain motor fuel taxes paid as allowed under state statutes. The Department states that in fiscal year 2022, the total amount of motor fuel taxes reported to the department by a person or licensee under A.R.S. §§ 28-5612 and 28-5613 was $876,790,246.78 and the total amount of refunds issued by the Department was $55,301,494.78. The total number of refunds issued was 3,439.

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 they routinely adopt the least costly and burdensome options for any process or procedure required of the regulated public or industry. They further state that these rules meet the objective of ensuring that the cost to those regulated under these rules remains minimal and is the less costly and intrusive method.

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

The Department indicates it 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?

While the Department indicates the rules are generally clear, concise, and understandable, the Department has determined that the following updates and changes would improve consistency and clarity and be current with the Program processes:

- **R17-8-601(B)(4):** Restructure and streamline this subsection into one paragraph and remove the hand delivery option and the room number from the street address in an effort to update the information and make the language more clear.
- **Table 1:**
  - ➢ **R17-8-602:** Add the verbiage "the required reporting" after "3 years from" in an effort to provide better clarity.
  - ➢ **R17-8-608:** Add the verbiage "or 6 months from the date of purchase" at the end of the statement in order to provide better flexibility for filing.
- **R17-8-602(A)(3)(d):** Add the word "the" before "total amount" for a better grammatical structure.
- **R17-8-610(B):** Remove one of the section symbols from the statutory reference for proper citation.

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

The Department indicates the rules are consistent with other rules and statutes.

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

The Department indicates the rules are effective in achieving their objectives.

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

As outlined in Section 5 above, the Department indicates that rule R17-8-601(B)(4) is not enforced as written because, due to logistical changes and staff relocations, the Fuel Tax Compliance Unit no longer accepts hand delivered applications and is not located in Room 201.

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

The Department indicates the rules are not more stringent than related federal law. Specifically, the Department indicates there are federal fuel taxes, but these rules are for the requirements to make a claim for a refund of the state fuel taxes and are separate from the federal fuel taxes and the federal fuel tax 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, while these rules detail the requirements for the issuance of a type of fuel tax refund and do not directly require the issuance of a permit or license, per statutory requirements some of the refunds require eligible claimants to be licensed; this includes: a supplier, an interstate user, a restricted distributor, and a use fuel vendor. The Department indicates the license for these entities would be considered a general permit since for each license type the facilities, activities, or practices in the class are substantially similar in nature. As such, the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Department relates to eleven (11) rules in Title 17, Chapter 8, Article 6 regarding Motor Fuel Refunds. Specifically, these rules specify requirements to qualify for a refund on taxes paid on motor fuel in various circumstances, as well as the timeframes to file an application for such refunds.

The Department has identified several rules that could be made more clear, concise, and understandable. Additionally, the Department has identified a rule that is not enforced as written. The Department indicates that rule R17-8-601(B)(4) is not enforced as written because, due to logistical changes and staff relocations, the Fuel Tax Compliance Unit no longer accepts hand delivered applications and is not located in Room 201. The Department proposes to amend these rules as outlined above and plans to request approval from the Governor's Office, pursuant to A.R.S. § 41-1039, upon approval of this report, and intends to submit the Notice of Final Expedited Rulemaking to the Council by the end of October 2023.

Council staff recommends approval of this report.

Director's Office

Katie Hobbs, Governor
John S. Halikowski, Director
Kismet Weiss, Deputy Director/Chief Operating Officer
Gregory Byres, Deputy Director for Transportation

January 27, 2023

Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: Arizona Department of Transportation, 17 A.A.C. Chapter 8, Article 6, Five-Year Review Report

Dear Ms. Sornsin:

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report of 17 A.A.C. Chapter 8, Article 6, which is due on January 31, 2023. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department hereby certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with Candace Olson, Rules Analyst, at (480) 267-6610 or at COlson2@azdot.gov.

Sincerely,

John S. Halikowski
ADOT Director

Enclosure: ADOT Five-year Review Report

Rules and Policy Development

A.A.C. Title 17 – Transportation

Chapter 8

Department of Transportation

Fuel Taxes

Article 6 – Motor Fuel Refunds

Five-Year Review Report

Katie Hobbs ***Governor***

John S. Halikowski ***ADOT Director***

Submitted to the Governor's Regulatory Review Council

January 2023

Arizona Department of Transportation

Five-Year Review Report

17 A.A.C. Chapter 8, Article 6

January 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 28-366

Specific Statutory Authority: A.R.S. §§ 28-373, 28-401, 28-5602, 28-5605, 28-5606, 28-5610, 28-5611, 28-5612, 28-5613, 28-5614, 28-5615, 28-5616, 28-5617, 28-5618, 28-5619, 28-5620, 28-5621, 28-5622, 28-5623, 28-5625, 28-5626, 28-5924, and 28-5925

2. The objective of each rule:

Rule	Objective
R17-8-601	This rule provides industry representatives and the public with a better understanding of terms specific to the rules contained in this Article and the general procedures for motor fuel tax refunds.
Table 1	This table provides the application filing time-frames per refund type for licensees and non-licensees.
R17-8-602	This rule specifies the requirements to qualify for a refund of taxes paid on exported motor fuel.
R17-8-603	This rule specifies the requirements to qualify for a refund of the use fuel tax differential.
R17-8-604	This rule specifies the requirements to qualify for a refund of taxes paid on motor fuel consumed in this state while a vehicle is off-highway.
R17-8-605	This rule specifies the requirements to qualify for a refund of taxes imposed on motor fuel consumed by a vehicle in idle status.
R17-8-606	This rule specifies the requirements to qualify for a refund of taxes imposed on motor fuel consumed by a vehicle owned by or leased to a tribal government.
R17-8-607	This rule specifies the requirements to qualify for a refund of taxes on motor fuel purchased by enrolled members of a tribe on the reservation of the tribe in which the member is enrolled if the motor fuel was not used off the reservation for a commercial purpose.
R17-8-608	This rule specifies the requirements to qualify for a refund of the tax on motor fuel used to transport forest products.
R17-8-609	This rule specifies the requirements to qualify for a refund on motor vehicle fuel used to power aircraft.
R17-8-610	This rule specifies the requirements to qualify for a refund of the tax on motor fuel lost due to fire, theft, accident, or contamination.
R17-8-611	This rule specifies the requirements for a refund of taxes paid on the bulk purchase of use fuel dispensed into a light class or exempt use class vehicle.

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 ___** **No X**

Rule	Explanation
R17-8-601(B)(4)	Due to logistical changes and staff relocations, the Fuel Tax Compliance Unit no longer accepts hand delivered applications and is not located in Room 201.

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

While the Department believes the rules under this Article are generally clear, concise, and understandable, the Department has determined that the following updates and changes would improve consistency and clarity and be current with the Program processes:

Rule	Explanation
R17-8-601(B)(4)	Restructure and streamline this subsection into one paragraph and remove the hand delivery option and the room number from the street address in an effort to update the information and make the language more clear.
Table 1	a. R17-8-602: Add the verbiage "the required reporting" after "3 years from" in an effort to provide better clarity. b. R17-8-608: Add the verbiage "or 6 months from the date of purchase" at the end of the statement in order to provide better flexibility for filing.
R17-8-602(A)(3)(d)	Add the word "the" before "total amount" for a better grammatical structure.
R17-8-610(B)	Remove one of the section symbols from the statutory reference for proper citation.

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:**

These rules were last amended by expedited rulemaking in 2018 (24 A.A.R. 3501, December 21, 2018); and an Economic, Small Business and Consumer Impact Statement was not required. The last full Economic, Small Business and Consumer Impact Statement completed for Article 6 was for the rulemaking completed in 2008 (14 A.A.R. 399, February 8, 2008).

The economic impact of these rules has remained essentially the same as indicated in the 2008 economic, small business and consumer impact statement. At that time the Department anticipated costs to be minimal for the Department. In addition, it was anticipated that there would be a minimal impact to the regulated industry and that associated costs expected to increase are anticipated to include training of staff for new requirements, studies, and other related services. However, the benefit to industry under these rules is a more clearly identified process regulating requests for refunds, which should allow for a reduction in filing errors resulting in a more expedited and efficient review and approval process.

Since the last rulemaking, the Department incurred substantial costs to complete the overhaul of some of the Department's computer systems, which included the databases, the computer programming, the ways the personnel performed transactions, and the ways and types of data the Department is able to retrieve. These changes were not a result of any rulemaking, but due to a need of the Department to further modernize its systems and provide for better capabilities. Outside of that, the costs for

the Department to continue its program of processing the fuel tax refunds under these rules are minimal due to the overall continuation of its processing structure and procedures.

In fiscal year 2022, the total amount of motor fuel taxes reported to the Department by a person or licensee under A.R.S. §§ 28-5612 and 28-5613 was $876,790,246.78 and the total amount of refunds issued by the Department was $55,301,494.78. The total number of refunds issued was 3,439. The Department received 3,591 refund requests and rejected 152 for reasons such as duplicative refunds requests, refund requests for which motor fuel use tax does not qualify under statute, and requests received without sufficient supporting documentation.

Some claimants may need to perform a study to test the amount of fuel consumed while in off-highway status. The review and approval of studies required to test the amount of fuel consumed while in off-highway status did not involve as many employees, and were not as involved, as anticipated in the 2008 economic, small business and consumer impact statement. The Department attempted to reduce the burden upon businesses by not requiring a study annually but instead either as requested by the Department or three years from the last study.

The economic impact of these rules on political subdivisions and businesses is minimal overall as there are no new requirements for the claimants and the rules continue to be streamlined and updated to provide clarity on the application process to the claimants. The required supporting documentation outlined in the rules are items a claimant would already maintain as a part of doing business and have been established requirements for some time. The Department does not charge a fee for applying for a refund. Claimants may incur costs for administration, staff training, printing and processing the required forms, and having a system for maintaining the required supporting documentation.

There is an unquantifiable benefit to the claimants as these rules help detail and clarify the refund requirements which allows for a more efficient and expedited refund process and a reduced chance that a request for refund will be rejected or returned for additional work and resubmission, which would subject the claimant to additional costs.

The Department does not anticipate an impact on private persons or consumers as a result of these rules. These rules are meant to help facilitate the process of obtaining a refund of certain motor fuel taxes paid as allowed under state statutes and as such do not have a direct impact on state revenue.

The Department believes that these rules meet the objective of ensuring that the cost to those regulated under these rules remains minimal and are the less costly and intrusive method.

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?

In the last five-year review report, the Department proposed to amend the rules in Article 6 as identified in item 6 of that report through expedited rulemaking. The Notice of Final Expedited Rulemaking was approved by the Council on December 4, 2018.

Rule	Explanation
Throughout the Article	The Department needs to make various grammatical and technical amendments throughout this Article that will help ensure consistency and conformity with the Arizona Administrative Procedure Act and Secretary of State rulemaking format and style requirements. The changes needing correcting that occur in various Sections throughout the Article include: a. Incorrect or missing punctuation. b. Use of inconsistent and incorrect terminology: 1. "Division": Replace the term with "Department" to reflect organizational changes made within the Department. 2. "Claimant": Make the term lowercase to ensure consistency and conformity with the Secretary of State rulemaking format and style requirements. 3. "Card lock": Make it one word to be consistent with statute and industry. 4. "Bulk motor fuel": Replace the word "motor" with "use" since the refunds are for bulk use fuel as opposed to motor fuel which allows for more fuel types (this change does not apply to the term use in R17-8-606(B)(3)). 5. "Power-take-off": Remove the hyphen between "power" and "take" to be consistent with industry terminology. c. Internal references: Correct the internal references that are missing the word "subsection" and in R17-8-601(B)(5)(d), correct the internal reference to R17-8-601(B)(2)(e) to read "subsection (B)(2)(d)." d. Incorrect or missing placement of "and" or "or" with enumerated lists. *(Completed December 4, 2018)*
R17-8-601	a. Definitions: In subsection (A), reorder and ensure the definitions are properly alphabetized. b. "Authorized representative" and "Claimant": Remove the term "authorized representative" and place the applicable wording into "claimant" since that is the only use of "authorized representative." c. "Complete application": Insert the word "all" after "includes" and insert "for the period of the refund claim" after "schedules" for clarification. d. "Daily log": Correct the CFR reference to 49 CFR 395.8. e. "GPS": Add language to clarify that it is the Global Positioning System and that it is a navigation system. f. "Mexican Pedimento": Remove "Mexico's state-owned, nationalized petroleum company" due to the change in import/export process in Mexico with the change to Petróleos Mexicanos. g. A complete application: In subsection (B)(2)(a), to clarify the accepted submittals of refund applications, add provisions stipulating that claimants many combine several months' totals in one application, which will require the removal of subsections (B)(2)(b)(ii), since it is now unnecessary and (B)(2)(c), since that language is contradictory, and require the renumbering of the subsection and applicable references; add provision stipulating that a complete application shall be for the whole calendar month and not for a partial month; and add a provision stipulating that supplemental applications covering the same period already paid are not

	permitted. h. Address: In subsections (B)(4)(a) and (B)(4)(b), update the addresses to conform to the organizational changes made within the Department, in addition clarifying language needs to be added to include mail submitted by a delivery service requiring a street address and to place certified and registered mail with United States Postal Service, which allows those delivery options to a post office box and not just to a street address. i. Supporting documentation: In subsection (B)(5)(a), add language for the option to submit documentation electronically via a CD or flash drive. *(Completed December 4, 2018)*
R17-8-602	a. Qualifications for Refund: In subsection (A), add "under this Article" after "To qualify", remove the term "use" before "fuel tax paid" because this rule applies to all motor fuel and is not limited to use fuel, and change "request for refund" to "complete application for refund." b. Exports to another state: In subsection (A)(1)(a), add the option of a delivery ticket as proof. c. Exports to Mexico: In subsection (A)(2), due to the change in import/export process in Mexico with the change to Petróleos Mexicanos, remove the references to documentation from Petróleos Mexicanos and add language to the Mexican Pedimento to stipulate that it must indicate authorization for import and verification of the motor fuel import to the end of the sentence for better clarity and renumber the subsection. d. Exports to Navajo Nation: In subsection (A)(3)(c), correct the term for the tax return to be for a motor fuel "distributor" tax return not "distribution" tax return. *(Completed December 4, 2018)*
R17-8-603	a. Complete application: In subsection (A)(1), add a reference and language to tie in the complete application as prescribed under R17-8-601. b. Invoices: In subsection (A)(2), add "restricted" before "distributor" so it reads "restricted distributor" to conform with A.R.S. § 28-5625. c. Supporting documentation: In subsection (A)(3), in order to clarify the requirements, amend language in subsection (A)(3)(a) to indicate that the fuel log is for pumps labeled for use class but dispensed into a light class or exempt use class vehicle, correct terminology and ensure the fuel log contains the same elements as in the Department's form as used by the applicants, remove the incorrect reference to subsection (D)(2) in subsection (A)(3)(a)(vii), and replace the language in subsection (A)(3)(b), which is unnecessary since fuel dispensed only at these pumps do not need any additional supporting documentation, with new language for the requirement of a report of the total pump sales by use fuel vendors who have both use class pumps and light class or exempt use class pumps, which the vendors currently submit. d. Unlicensed vendors: Remove subsection (B) since it contradicts A.R.S. § 28-5626 and the language is outdated since the licensing process has changed and is now an electronic process; this will also require a renumbering of this Section and applicable internal references to be updated. e. Acquisition invoices: In subsection (C)(2), update the invoice terminology by replacing "acquisition" with "purchase."

	f. Cardlock Declaration of Status: In subsection (D)(2)(a), remove the end verbiage regarding being "labeled for light class or exempt use class vehicles" since it is unnecessary language. g. Mobile fueling vendors: Add language for the requirements, which are similar to the cardlock use fuel facility, of the mobile fuel vendors, who dispense motor fuel from tank vehicles into the fuel tanks of motor vehicles. *(Completed December 4, 2018)*
R17-8-604	a. Scope: In subsection (A), add "under this Article" after "refund" for clarification and consistency with other rules. b. Application: In subsection (B), add "a complete" before "application for refund" and add "as prescribed under R17-8-601" after "refund" for clarification and to tie-in with the complete application requirements under that Section. c. Motor fuel log summary: To clarify, add "when applicable" at the end of subsection (B)(1)(b) to indicate that not all logs would need this information. d. Equipment and vehicle listing: In subsection (B)(2), remove "model" and "gallon capacity" and add "equipment type", "VIN or equipment serial number", and "gross vehicle weight" to be more accurate and better indicate what is needed by the Department from the claimants. In addition, in subsection (C)(1)(b), correct the equipment or vehicle identification number verbiage to be the equipment or vehicle listing. e. Proof of fuel purchase: In subsection (B)(3), remove the option of the International Fuel Tax Agreement report since it does not contain the necessary information for valid proof. f. Power take-off refunds: In subsection (C)(2)(d)(iv)(4), replace "151" with "150" so that it reads "More than 150 vehicles" because the number of exactly 151 vehicles is not addressed. *(Completed December 4, 2018)*
R17-8-605	a. Application: In subsection (B), add "a complete" before "application for refund" and add "as prescribed under R17-8-601" after "refund" for clarification and to tie-in with the complete application requirements under that Section. b. Fuel log information: In subsection (B)(1)(b)(ii), delete "vehicle make, model, year, and VIN" and replace with "number of the equipment or vehicle" for clarity and in subsection (B)(1)(b)(iii), replace "a" with "the" for clarity. c. Study Results: In subsection (C)(8), amend language so "a period" reads "periods" and "includes" reads "capture" for clarity. *(Completed December 4, 2018)*
R17-8-606	a. Application: In subsection (B), add "a complete" before "application for refund" and add "as prescribed under R17-8-601" after "refund" for clarification and to tie-in with the complete application requirements under that Section. b. Fuel receipt: In subsection (B)(1)(e), correct the term "purchaser's" with "seller's" for accuracy. c. Vehicle and equipment listing: In subsection (C), remove "model" and "gallon capacity" and add "equipment type", "VIN or equipment serial number", and "gross vehicle weight" to be more accurate and better indicate what is needed by the Department from the claimants.

	(Completed December 4, 2018)
R17-8-607	a. Scope: In subsection (A), add "as prescribed under R17-8-601" before "for a refund" for clarification. b. Complete application: In subsection (B), add "a complete" before "application for refund" and add "as prescribed under R17-8-601" after "refund" for clarification and to tie-in with the complete application requirements under that Section. *(Completed December 4, 2018)*
R17-8-608	a. Application: In subsection (B), add "a complete" before "application" and add "for refund, as prescribed under R17-8-601" after "application" for clarification and to tie-in with the complete application requirements under that Section. In addition, remove "obtained from the Arizona Department of Commerce" at the end of the sentence since not all of the documentation is obtained from the Arizona Commerce Authority. b. "Arizona Department of Commerce", change the term to "Arizona Commerce Authority" to conform to the change in that agency. c. Equipment and vehicle listing: In subsection (B)(1), replace the "Healthy Forest Enterprise Use Fuel Vehicle Schedule" with the equipment and vehicle listing since the Department prefers claimants to submit an equipment and vehicle listing. d. Purchase invoices: Add a provision for the claimants to submit the purchase invoices of the use fuel since the Department has determined that it needs this as adequate documentation and proof for the refund. *(Completed December 4, 2018)*
R17-8-609	Application: In subsection (B), add "a complete" before "application" and add "for refund, as prescribed under R17-8-601" after "application" for clarification and to tie-in with the complete application requirements under that Section. *(Completed December 4, 2018)*
R17-8-610	a. Application: In subsection (C), add "a complete" before "application" and add "for refund, as prescribed under R17-8-601" after "application" for clarification and to tie-in with the complete application requirements under that Section. b. Contaminated fuel: In subsection (C)(1)(f), delete "motor" from "contaminated motor fuel" to conform with the defined term in R17-8-601(A). *(Completed December 4, 2018)*
R17-8-611	a. Scope: In subsection (A), add "as prescribed" before "under R17-8-601(B) for clarity." b. Application: In subsection (C), add "a complete" before "application for refund" and add "as prescribed under R17-8-601" after "refund" for clarification and to tie-in with the complete application requirements under that Section. *(Completed December 4, 2018)*

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:

In rulemaking, the Department routinely adopts the least costly and burdensome options for any process or procedure required of the regulated public or industry. These rules impose minimal costs. Therefore, the Department has determined that the following rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

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

There are federal fuel taxes, but these rules are for the requirements to make a claim for a refund of the state fuel taxes and are separate from the federal fuel taxes and the federal fuel tax 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:

While these rules detail the requirements for the issuance of a type of fuel tax refund and do not directly require the issuance of a permit or license, per statutory requirements some of the refunds require eligible claimants to be licensed; this includes: a supplier, an interstate user, a restricted distributor, and a use fuel vendor. The license for these entities would be considered a general permit since for each license type the facilities, activities, or practices in the class are substantially similar in nature.

14. Proposed course of action

The Department proposes to amend the rules as identified in item 6 through expedited rulemaking. The Department plans to request approval from the Governor's Office, pursuant to A.R.S. § 41-1039, upon approval of this report. The Department intends to submit the Notice of Final Expedited Rulemaking to the Council by the end of October 2023.

B. Licensure shall be subject to cancellation by the Department upon a licensee's failure to comply with this Chapter and A.R.S. Title 28, Chapter 16 or 25, for failing to file an electronic report as required under A.R.S. § 28-5930.

C. Remedies are cumulative. A cancellation of licensure under this Chapter and A.R.S. Title 28, Chapters 16 and 25, shall not terminate any reporting requirement or fee, tax, penalty or interest obligation.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 278, effective March 7, 2009 (Supp. 09-1).

ARTICLE 6. MOTOR FUEL REFUNDS

R17-8-601. Definitions and General Provisions

A. Definitions. The following definitions apply to this Article unless otherwise specified:

"Application" means a request for refund of motor fuel taxes, made on a form provided by the Department.

"Cardlock use fuel facility" has the same meaning as a cardlock facility as defined in A.R.S. § 28-5605.

"Claimant" means the taxpayer or a person who has the authority to file an application on behalf of the taxpayer, as authorized by a notarized power of attorney, also referred to as applicant.

"Complete application" means an application that includes all supporting documentation and schedules for the period of the refund claim, claimant signature, and provides all information required on the application.

"Contaminated Fuel" means motor fuel, which is accidentally tainted, and which is unsalable for highway use.

"Daily log" means notations made by a driver of a commercial motor vehicle which records a daily record of duty status as specified under 49 CFR 395.8.

"Declaration of Status" means a statement on a form provided by the Department that a light class or exempt use class vehicle qualifies for use fuel tax differential under A.R.S. § 28-5606(B)(2).

"Destination state" means a state in the United States, other than the state of Arizona.

"Diversion" means delivery of motor fuel to a destination state other than the intended destination as signified on a carrier bill of lading.

"Exempt use class motor vehicle" means a vehicle exempt from gross weight fees under A.R.S. § 28-5432.

"GPS" means the Global Positioning System, a navigation system of satellites and receiving devices used to compute vehicle position and time information.

"Highway" has the same meaning as defined in A.R.S. § 28-5601, and also includes a:

Port of entry,
Weigh station, or
Public rest area.

"Idle status" means a vehicle that is stationary, its engine continues to operate, and it is located in Arizona, but off-highway.

"Licensee" has the same meaning as defined in A.R.S. § 28-5613.

"Light class motor vehicle" has the same meaning as defined in A.R.S. § 28-5601.

"Mexican Pedimento" means an authorizing permit document issued by Mexico.

"Motor fuel" has the same meaning as defined in A.R.S. § 28-5601.

"Motor fuel tax" means any tax on motor fuel imposed under A.R.S. Title 28, Chapter 16, Article 1.

"Notification date" means the date on a notice sent by the Department.

"Off-highway" means any location that is not on a highway in this state.

"Person" has the same meaning as defined in A.R.S. § 28-5601.

"Power take-off" means the operation of vehicle-mounted, auxiliary equipment that is powered by energy supplied by the same engine that propels the motor vehicle, but does not include equipment related to the operation of a vehicle and powered by the vehicle's engine, including air conditioning, alternator, automatic transmission, and power steering.

"Tribal agreement" means an agreement between the Department and a Native American tribe for the administration of motor fuel taxes.

"Trip" means travel within or through Arizona's state borders with a designated beginning and ending location.

"Use class motor vehicle" has the same meaning as defined in A.R.S. § 28-5601.

"Use fuel" has the same meaning as defined in A.R.S. § 28-5601.

"Use fuel tax differential" means the difference between the use fuel tax rate applicable to light class motor vehicles or exempt use class motor vehicles, and the use fuel tax rate applicable to use class motor vehicles.

"Vendor" has the same meaning as defined in A.R.S. § 28-5601.

"VIN" means Vehicle Identification Number.

B. General Provisions.

1. Scope. For purposes of administering A.R.S. § 28-5612 this Article applies to a person or licensee under A.R.S. §§ 28-5612 and 28-5613.
2. Application.
   a. A complete application for refund of motor fuel tax shall be submitted to the Department.
      i. A claimant may combine several months' totals and submit to the Department one application for refund.
      ii. A complete application shall be for the whole calendar month and not for a partial month.
      iii. Supplemental applications for refunds covering the same period already paid are not permitted.
   b. An application for refund for an amount of $10 or less shall be accepted only once within a consecutive six-month period.
   c. When the Department determines that an application is incomplete under these rules and A.R.S. Title 28, Chapter 16, Article 1, the Department shall suspend processing of the application for refund and,
      i. Notify the claimant of the deficiencies, and
      ii. Return the application to the claimant.
   d. A claimant whose application is returned as incomplete under A.R.S. Title 28, Chapter 16, Article 1

and these rules shall have 60 days from the notification date to remedy the deficiencies.

e. If the claimant fails to remedy the deficiencies under subsection (B)(2)(c) within 60 days of the notification date and return a complete application, the Department shall deny the application for refund.

f. If the Department denies an application because the claimant failed to remedy a deficiency, the deadline to submit a new application shall be governed by the time-frames established in subsection (B)(3).

3. Application filing. A complete application for refund shall be submitted to the Department as provided in Table 1.

4. Filing location and timely filing. A claimant shall submit an application under this Article to the Department as provided under A.R.S. § 1-218, and this subsection:

a. Hand delivered or other delivery service requiring a street address:

i. Arizona Department of Transportation, Financial Management Services, Fuel Tax Refund Compliance Unit, 1801 W. Jefferson St., Rm. 201, Phoenix, AZ 85007.

ii. Hand delivered: the Department time and date stamp will be used to determine whether a complete application was received within the required time-frames established under subsection (B)(3).

iii. Other delivery service: the date of receipt by the designated delivery service shall be used to determine whether an application was received by the Department within the required time-frame established under subsection (B)(3).

b. United States Postal Service, including certified or registered mail:

i. Arizona Department of Transportation, Financial Management Services, Fuel Tax Refund Compliance Unit, P.O. Box 2100, Mail Drop 521M, Phoenix, AZ 85001.

ii. Regular mail: the postmark date will be used to determine whether an application was received by the Department within the required time-frames established under subsection (B)(3).

iii. Certified or registered mail: the date of receipt by the designated delivery service shall be used to determine whether an application was received by the Department within the required time-frame established under subsection (B)(3).

c. Other method as indicated on the Department's website at www.azdot.gov.

5. Supporting documentation.

a. The Department shall accept any of the following forms of documentation to support a claim for refund, which may be admissible to the same extent as an original:

i. Photocopies;

ii. Duplicates (reprints);

iii. Document image; or

iv. Electronic copy, as indicated on the Department's website at www.azdot.gov.

b. The Department shall not return documentation submitted to support an application for refund once an application for refund has been accepted as complete.

c. If the Department determines that the supporting documentation required under these rules does not provide sufficient evidence of motor fuel tax paid, the Department may require the claimant to produce additional information.

d. Failure to produce additional documentation as requested by the Department, within the time prescribed under subsection (B)(2)(d), shall result in a denial of refund request being issued by the Department.

6. Record retention and review.

a. A licensee shall maintain the records relied upon to support the application for refund as specified under A.R.S. Title 28, Chapter 16, Article 1 and these rules, and produce those records to the Department when requested.

b. Unless required by A.R.S. Title 28, Chapter 16 to maintain records relied upon to substantiate an application for refund for a shorter or longer period of time, a licensee shall retain the records required to support an application for refund for three years from the issuance date of refund by the Department.

c. The Department reserves the right to review a claimant's records used to substantiate an application for refund under these rules.

7. If at any time, the Department discovers an overpayment of motor fuel tax refunded to a claimant under these rules, the Department shall recover payment under A.R.S. § 28-5612.

8. Notification; violation; suspension; administrative hearing.

a. Denial of request for refund. If the Department denies an applicant's request for refund the Department shall send notification of denial to the claimant.

b. Administrative Hearings. Hearings, rehearings, and appeals shall be noticed and conducted in accordance with A.R.S. § 28-5924 and A.A.C Title 17, Chapter 1, Article 5.

c. Suspension due to violation of A.R.S. § 28-5612.

i. If the Department finds that a claimant is in violation of A.R.S. § 28-5612, the Department shall send notification to the claimant identifying the violation.

ii. A claimant determined by the Department to be in violation of state laws and regulations under A.R.S. § 28-5612 and these rules, may be suspended from filing motor tax fuel refunds for six consecutive months from the notification date of the Department for motor fuel tax paid during the suspension period.

iii. If a suspension is set aside under A.R.S. § 28-5612, a claimant may again apply to the Department for refund.

iv. The time-frame requirements under subsection (B)(3) shall not toll while pursuit of remedy by the claimant or the Department under this subsection.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

Table 1.

Refund Type	**Claimant Status**	
Sections	Licensee	Non-Licensee
R17-8-602. Exports	3 years from date of export	3 months from date of export
R17-8-603. Use Fuel Vendors	3 years from date of sale	6 months from date of sale
R17-8-604. Off-Highway	3 years from date of purchase	6 months from date of purchase
R17-8-606. Tribal Government	If no Tribal Agreement with the Department, 6 months from date of purchase	
R17-8-607. Tribal Member		
R17-8-608. Transport of Forest Products; Healthy Forest Initiative	March 1st of the year following calendar year consumed	
R17-8-609. Motor Fuel Used in Aircraft	6 months from date of purchase	
R17-8-610. Motor Fuel Losses Caused by Fire, Theft, Accident, or Contamination	3 years from date of event	6 months from date of event
R17-8-611. Bulk Purchase of Use Fuel	3 years	6 months

Historical Note
Table 1 made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Table 1 amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-602. Exports

A. To qualify under this Article for a refund of Arizona fuel tax paid on motor fuel exported, a claimant shall provide the following documents to support a complete application for refund:
1. Export to another state within the United States:
   a. Terminal, carrier, or bulk plant bill of lading or delivery ticket showing the point of origin and destination of the motor fuel;
   b. Invoice or monthly supplier report schedule indicating that the Arizona tax was paid;
   c. Motor fuel invoice or shipping document reflecting final destination and gallons exported;
   d. Tax report establishing that the destination state's tax was reported;
   e. Name and license number issued by the destination state of the licensee responsible for payment of motor fuel tax and tax reporting to the destination state; and
   f. If the export of motor fuel is a diversion, the claimant shall provide the following documents to the Department:
      i. A carrier bill of lading; and
      ii. Other documentation which supports the delivery of motor fuel to a specific location, other than its intended destination.
2. Exports to Mexico:
   a. Documentation under subsection (A)(1),
   b. U.S. Department of Commerce export documentation, and
   c. Copy of Mexican Pedimento indicating authorization for import and verification of the motor fuel import.
3. Exports to Navajo Nation:
   a. Documentation under subsection (A)(1),
   b. Name and license number of the Navajo Nation distributor,
   c. Copy of Navajo Nation manifest or copy of the Navajo Nation monthly motor fuel distributor tax return, and
   d. Invoice showing the Navajo Nation tax was included in total amount due.

B. The description of the motor fuel exported shall be identical on all documentation submitted in support of a request for refund of motor fuel tax paid on export.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-603. Use Fuel Vendors

A. To qualify for refund of the use fuel tax differential, a use fuel vendor shall submit to the Department:
1. A complete application as prescribed under R17-8-601;
2. Supplier or restricted distributor invoice, documenting the use fuel taxes that the vendor paid for the fuel; and
3. Supporting documentation:
   a. For sales of use fuel dispensed from a pump which is labeled for use class into a light class or exempt use class vehicle, a fuel log of use fuel tax differential sales, submitted on a format approved by the Department that includes the following vendor information:
      i. Vendor name;
      ii. Department-issued retail branch number;
      iii. Retail branch physical address;
      iv. Department-issued vendor license number;
      v. Date of sale to consumer;
      vi License plate number and name of jurisdiction that issued the license plate of the motor vehicle into which the fuel was dispensed;
      vii. Number of gallons of use fuel that were purchased and dispensed into the fuel tank of a qualifying vehicle;
      viii. Amount of fuel tax refunded to purchaser; and
      ix. Purchaser's name and signature indicating receipt of the refund made by a vendor of use fuel, submitted on a vendor use fuel refund log, provided by the Department.
   b. For use fuel vendors who have sales of use fuel dispensed from both a pump labeled for use class and from a pump labeled for light class or exempt use class, a report of the total pump sales for each type.

B. A licensed use fuel vendor shall maintain the following records under R17-8-601(B)(6):

1. Records of daily sales to light class or exempt use class motor vehicles which provides details for each use fuel sale to include the following:
   a. Gallonage,
   b. Transaction date,
   c. Price per gallon, and
   d. Product description;
2. Purchase invoices of use fuel;
3. Inventory records of use fuel; and
4. Vendor use fuel refund log under subsection (A)(3)(a).

C. Cardlock use fuel facility.
1. Applicability. For purposes of receiving a refund from the Department for use fuel sold to a light class or exempt use class vehicle at a cardlock use fuel facility, the vendor shall:
   a. Submit documentation under subsection (A)(3), except subsection (A)(3)(a)(ix), to the Department;
   b. Have controlled access to the cardlock use fuel facility in compliance with A.R.S. § 28-5605;
   c. Restrict use of a cardlock use fuel facility to those approved purchasers that have completed a Declaration of Status; and
   d. Shall maintain records under subsection (B).
2. Declaration of Status.
   a. A vendor shall require that a purchaser of use fuel for use in light class or exempt use class vehicles complete and submit to the vendor a Declaration of Status for each vehicle that will have the ability to obtain fuel at a cardlock use fuel facility.
   b. A Declaration of Status must be completed for each additional vehicle prior to purchase of motor fuel at a cardlock use fuel facility.
   c. A Declaration of Status shall be made on a form provided by the Department and may be obtained at www.azdot.gov.
   d. The original signature of the purchaser shall be included on the Declaration of Status.
   e. A vendor who operates a cardlock use fuel facility must retain all original Declarations of Status received from a purchaser in the vendor's files under R17-8-601(B)(6), and shall make the Declarations of Status available for review by the Department.
3. Labeling. A cardlock vendor shall comply with state law by placing a label with verbiage and specifications as required under A.R.S. § 28-5605.
   a. Cardlock use fuel facilities shall post a use fuel tax rate label provided by the Department.
   b. Vendors found in violation of labeling regulations shall be subject to penalties under A.R.S. § 28-5605.

D. Mobile fueling vendor.
1. Applicability. For purposes of receiving a refund from the Department for use fuel sold and delivered directly from a mobile vehicle into a light class or exempt use class vehicle fuel tank for other than the dispenser's own consumption, the vendor shall:
   a. Submit documentation under subsection (A)(3), except subsection (A)(3)(a)(ix), to the Department; and
   b. Shall maintain records under subsection (B).
2. Declaration of Status.
   a. A vendor shall require that a purchaser of dispensed use fuel complete and submit to the vendor a Declaration of Status for each light class or exempt use class vehicle that will have the ability to obtain fuel with a mobile fueling vendor.
   b. A Declaration of Status must be completed for each additional vehicle prior to delivery of motor fuel by a mobile fueling vendor.
   c. A Declaration of Status shall be made on a form provided by the Department and may be obtained at www.azdot.gov.
   d. The original signature of the purchaser shall be included on the Declaration of Status.
   e. A vendor who operates a mobile fueling operation must retain all original Declarations of Status received from a purchaser in the vendor's files under R17-8-601(B)(6), and shall make the Declarations of Status available for review by the Department.
3. Labeling. A mobile fueling vendor shall comply with state law by placing a label with verbiage and specifications as required under A.R.S. § 28-5605.
   a. Mobile fueling vendors shall post on their fueling dispenser a use fuel tax rate label provided by the Department.
   b. Vendors found in violation of labeling regulations shall be subject to penalties under A.R.S. § 28-5605.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-604. Off-Highway

A. The Department shall refund under this Article the Arizona motor fuel tax paid on the motor fuel consumed in Arizona while the vehicle is off-highway.

B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
1. System or manual motor fuel log summary by VIN which includes the following:
   a. Items under subsection (C)(1)(a), and
   b. Mileage consumed off-highway when applicable;
2. Equipment and vehicle listing which includes year, make, equipment type, VIN or equipment serial number, and gross vehicle weight; and
3. Proof of fuel purchase which may include:
   a. Motor fuel invoices,
   b. Motor fuel purchase receipts, and
   c. Computerized fuel purchase statement.

C. A claimant shall provide the following documentation to the Department for the identified refund types:
1. Refrigeration unit:
   a. Fuel log summary consisting of, at a minimum, the following information:
      i. Fuel type,
      ii. Date fuel dispensed,
      iii. Number of gallons dispensed, and
      iv. Identification number of equipment or vehicle into which the fuel was dispensed.
   b. Equipment or vehicle listing which includes year, make, equipment type, VIN or equipment serial number, and gross vehicle weight.
2. Power take-off: A motor fuel consumption study under this Section shall be conducted at the claimant's expense, and shall be approved by the Department prior to the initial application for refund, and shall include the following information:
   a. A description of the methodology used to determine the percentage of exempt motor fuel consumed by the power take-off;
   b. A list of all equipment using motor fuel;

c. All operations where motor fuel is consumed;
d. Testing and study components shall be a true representation of the operation of business as follows:
i. Vehicles shall be grouped into similar categories based on similar power take-off units and similar gross vehicle weight.
ii. Vehicles selected shall be representative of the category as to age, make, model, and engine size.
iii. Each vehicle category shall be tested individually to determine the amount of motor fuel consumed by the power take-off unit.
iv. If a vehicle category contains:
(1) Less than four vehicles, all vehicles must be included in the test study.
(2) Thirty or fewer vehicles, then at least three vehicles must be included in the test sample.
(3) More than 30 and fewer than 151 vehicles, then at least 10 percent of the vehicles must be included in the test sample.
(4) More than 150 vehicles, then at least 15 vehicles must be included in the test sample.
e. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications;
f. Results of a period of a study which shall include a period covering cyclical or seasonal impacts which captures low and high points of fuel usage for exempt or non-exempt purposes;
g. Results from a test or study shall be a duration of at least two weeks; and
h. The approved power take-off percentage may then be used for three years or shall be updated as requested by the Department.
3. Idle time as prescribed under R17-8-605.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-605. Idle Time

A. Under the provisions of this Article, the Department shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a claimant's vehicle while in idle status.

B. A complete application for refund, as prescribed under R17-8-601, shall include the following documentation to verify the quantity of motor fuel consumed by a vehicle while in idle status:
1. Documentation that proves the total quantity of motor fuel purchased by the claimant in Arizona during refund period:
a. An invoice that contains the following information:
i. Date of purchase,
ii. Seller's name,
iii. Physical address where motor fuel was purchased,
iv. Number of gallons of motor fuel purchased,
v. Type of motor fuel purchased, and
vi. Price per gallon of motor fuel.
b. A fuel log shall be maintained that contains the following information:
i. The date that the motor fuel was placed in the fuel tank of a motor vehicle,
ii. The identification number of the equipment or vehicle in which the motor fuel was placed, and
iii. The number of gallons of motor fuel placed in the fuel tank.
c. In lieu of subsections (B)(1)(a) and (b), a licensee may submit a summary of the fuel purchases made by the claimant for the vehicle during the refund period. The summary shall contain the same information required to be on a fuel invoice under subsection (B)(1)(a).
2. Documentation that proves that the claimant's vehicle was located in Arizona, off-highway, at the time it was in idle status, and the length of time the vehicle was in idle status, using one or more of the following methods:
a. Nonscheduled route:
i. A logbook, approved by the Department, maintained for each vehicle that identifies the date and time when the idle status started, the date and time when the idle status ended, and a physical description of the location of the vehicle during the idle status that establishes that the vehicle was in Arizona, but located off-highway.
ii. The driver shall make an affirmative statement in the driver's daily log that the engine was operating during the idle status and shall prepare the logbook entries simultaneously with the idle status.
iii. The claimant shall retain trip schedules or bills of lading to support the logbook entries.
b. Scheduled route:
i. Published schedule which includes arrival at and departure from fixed locations at prescribed times; or
ii. A record of average wait times recorded in a daily log consisting of arrival at and departure from fixed locations at prescribed times, approved by the Department; and
iii. The claimant shall document that the engine remained running during the scheduled stops.
c. Global Positioning System:
i. A report from a GPS, approved pursuant to subsection (C).
ii. The claimant shall maintain trip schedules or bills of lading to support GPS reports.
3. Documentation that proves the quantity of motor fuel consumed by the claimant's vehicle while in idle status:
a. The claimant shall document the number of the gallons of motor fuel consumed per hour to maintain idle status by one or more of the following methods:
i. Engine manufacturer's standard specifications that establish the quantity of motor fuel consumed per hour while the vehicle is in idle status.
ii. Computerized system that computes the quantity of motor fuel consumed per hour while in idle status.
iii. A study or test that determines motor fuel consumption per hour while in idle status, prior to the period covered by the refund claim.
b. A study under this Section shall meet the following specifications:
i. The study shall be conducted at the claimant's expense,

ii. The methodology shall be approved by the Department prior to conducting the study under subsection (C),
iii. The fuel consumption characteristics of the vehicles and their operation during the period of the refund shall not vary significantly from the conditions that existed during the study, and
iv. The results of the study shall be approved by the Department prior to the time period covered under the refund claim.

C. The Department shall review and approve the method used and the data captured by a GPS or manual report prior to the initial claim for refund and the report shall include the following components:
1. A description of the methodology used to determine the percentage of exempt use fuel consumption;
2. A list of all equipment consuming use fuel;
3. A description of all of the vehicle operations where use fuel is consumed;
4. Whether vehicles are traveling scheduled routes, and whether seasonal or cyclical events affect use fuel;
5. Testing and study components shall be a true representation of operation of business as follows:
   a. Vehicles shall be grouped into similar categories based on similar units and similar gross vehicle weight.
   b. Each vehicle category must be tested individually to determine the idle time fuel consumption.
   c. Vehicles selected for testing shall be representative of the category as to age, make, model, and engine size.
6. Study components under R17-8-604(C)(2)(d)(iv);
7. Explanation of the measuring method used to determine fuel consumption by vehicles, equipment, and machinery, which shall include manufacturer specifications;
8. Study results under this subsection shall include periods covering cyclical or seasonal impacts which captures low and high points of fuel usage for exempt or non-exempt purposes;
9. Results from a test or study shall be of duration of at least two weeks; and
10. The approved idle time study may then be used for three years or shall be updated as requested by the Department.

D. A claimant shall submit technical documentation that details the operating system of any system or manual study used including, but not limited to, the following:
1. Identification of the computer system, including the name of the manufacturer, name of the software, and software version number;
2. Identification of vehicle engines on which the software will be used by the claimant, including makes, models, years, and fuel types;
3. Description of the methodology used by computer system to determine idle status;
4. Description of the methodology used to determine fuel consumption while in idle status;
5. Description of the methodology used to determine the location of the vehicle during idle status; and
6. Operating policies and procedures for the systems that are used in the claimant's business operations.

E. The claimant shall provide additional supporting documentation if there is any update to the system study for which documentation was initially submitted and approved.
1. A claimant shall submit to the Department an updated study under this Section three years from the date of Department approval or at the Department's request.
2. A study under this Section shall be conducted at the claimant's expense.
3. The methodology used in support of a study under these rules shall be approved by the Department prior to conducting the study under subsection (C).
4. If the Department rejects the results of a study, a claimant may request a hearing under A.R.S. § 28-5924.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-606. Tribal Government

A. The Department shall refund the Arizona motor fuel tax imposed on the motor fuel consumed by a vehicle owned or leased to a tribal government under this Article.

B. A complete application for refund, as prescribed under R17-8-601, shall include all of the following supporting documentation for each vehicle:
1. Detailed fuel receipt statement which includes the following purchase information:
   a. Date of fuel purchase,
   b. Gallonage,
   c. Location,
   d. Fuel type, and
   e. Seller's name and address;
2. Fuel purchase summary by vehicle which includes documentation under subsection (B)(1);
3. Bulk motor fuel purchase invoice which includes:
   a. Gallonage,
   b. Delivery location,
   c. Fuel type, and
   d. Tax rate paid; and
4. If vehicle is leased, a copy of the lease agreement.

C. A vehicle and equipment listing shall be maintained by the tribal government to include year, make, equipment type, VIN or equipment serial number, and gross vehicle weight.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-607. Tribal Member

A. Enrolled members of a tribe may make application to the Department, as prescribed under R17-8-601, for a refund of the Arizona motor fuel taxes on fuel purchased on the reservation of the tribe in which the member is enrolled, provided the motor fuel was not used off the reservation for a commercial purpose.

B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
1. Copy of the vehicle registration,
2. Copy of the Tribal member identification card,
3. Receipt of motor fuel purchased on the reservation, and
4. Signed statement certifying motor fuel was used for non-commercial purposes under A.R.S. § 28-5610(A).

Historical Note
New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-608. Transport of Forest Products; Healthy Forest Initiative

A. A claim for refund, pursuant to A.R.S. § 28-5614(B), of the tax on motor fuel used to transport forest products on Arizona highways shall comply with the requirements of R17-8-601.

B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
1. An equipment and vehicle listing which includes year, make, equipment type, VIN or equipment serial number, and gross vehicle weight;
2. Certification letter issued by the Arizona Commerce Authority pursuant to A.R.S. § 41-1516 for the same period of time as the refund claim;
3. Memorandum of Understanding between the Arizona Commerce Authority and the claimant pursuant to A.R.S. § 41-1516;
4. Individual Project Mileage and Fuel Reports for each project;
5. Purchase invoices of use fuel; and
6. Changes to the Arizona Commerce Authority Certification when applicable.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-609. Motor Vehicle Fuel Used in Aircraft

A. A claim for the refund of the tax, pursuant to A.R.S. § 28-5611(A)(2) or non-agricultural purposes under A.R.S. § 28-5611(B), on motor vehicle fuel used to power aircraft shall comply with the requirements of R17-8-601 and subsections (B) and (C) of this Section.

B. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
1. Motor fuel log summary by aircraft which includes:
   a. Purchase date,
   b. Name and location of vendor of fuel to show that Arizona motor fuel tax was included in the purchase price,
   c. Gallons dispensed,
   d. Fuel type, and
   e. Manner consumed;
2. List of aircraft to include, year, make model, and N-number assigned by the Federal Aviation Administration; and
3. Purchase invoice indicating items under subsection (B)(1) and amount of tax paid.

C. Motor vehicle fuel used to power aircraft for agricultural purposes shall, in addition to subsection (B), include a flight log detailing the purpose of use.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-610. Motor Fuel Losses Caused by Fire, Theft, Accident, or Contamination

A. A claimant may apply to the Department for a refund of the tax on motor fuel lost due to fire, theft, accident, or contamination.

B. A request for refund pursuant to A.R.S. §§ 28-5610 or 28-5611 of the tax on motor fuel that is lost due to fire, theft, accident, or contamination shall comply with the requirements of R17-8-601.

C. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
1. Signed statements from persons with personal knowledge regarding the facts and circumstances of the loss, including:
   a. Date of loss or contamination,
   b. Location where the loss or contamination occurred,
   c. Detailed explanation regarding the nature of the loss or contamination,
   d. Name and contact information of persons who witnessed loss or contamination,
   e. Quantity of fuel lost or contaminated, and
   f. Disposition of the contaminated fuel.
2. Copies of records that substantiate the date of acquisition and quantity acquired of the fuel lost as well as the fact the Arizona motor fuel tax was paid by the claimant when the fuel was acquired.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

R17-8-611. Bulk Purchase of Use Fuel

A. A request for refund of taxes paid on the bulk purchase of use fuel dispensed into a light class, or exempt use class vehicle, shall be submitted to the Department, as prescribed under R17-8-601(B), on an application provided by the Department.

B. Bulk use fuel shall be purchased and consumed in Arizona to qualify for refund.

C. A complete application for refund, as prescribed under R17-8-601, shall include the following supporting documentation:
1. Invoice that contains the following information:
   a. Name and address of vendor,
   b. Tax rate,
   c. Product type,
   d. Delivery date,
   e. Quantity of fuel,
   f. Invoiced amount, and
   g. A statement from the seller of the use fuel that the use fuel is non-dyed use fuel.
2. Fuel usage log which includes the following information:
   a. Date fuel dispensed,
   b. VIN of vehicle into which fuel was dispensed,
   c. Gallons dispensed, and
   d. Fuel type.
3. Annual vehicle listing to include make, model, year, VIN, and gross vehicle weight.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 399, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 24 A.A.R. 3501, effective December 4, 2018 (Supp. 18-4).

28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

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

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-373. Refunds; limitations

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

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

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

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

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

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

28-401. Intergovernmental agreements

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

B. The director shall enter into agreements on behalf of this state with political subdivisions or Indian tribes for the improvement or maintenance of state routes or for the joint improvement or maintenance of state routes.

C. The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with a county with a population of more than two million persons for the construction, design, acquisition and attendant acquisition costs of a county highway bridge to provide direct access to commercial, residential and recreational facilities. The agreement shall:

1. Contain the commitment of the county to pay other monies for the purpose of financing the bridge.

2. State the responsibilities of each party with regard to planning, designing, constructing, owning and maintaining the bridge.

3. Provide that payment for the costs of the bridge shall be made from contributions from the parties to the agreement and other contributors before the use of state transaction privilege tax distributions.

D. The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 with a county with a population of more than two million persons for the design, reconstruction and improvement costs of a county highway approaching and traversing a bridge constructed pursuant to subsection C of this section. The agreement shall:

1. Contain the commitment of the county to pay other monies for the purpose of financing the highway improvements.

2. State the responsibilities of each party with regard to planning, designing, constructing, owning and maintaining the highway.

3. Provide that payment for the costs shall be made from contributions from the parties to the agreement and other contributors before the use of state transaction privilege tax distributions.

4. Provide for reimbursement to the state general fund of the amount of highway improvement revenues paid to the highway improvement interest fund or redemption fund under section 28-7656, subsection B on the voluntary conveyance of a majority ownership interest in a sports entertainment facility as prescribed by section 42-5032, subsection B.

5. Contain the representation of the county that it has the legally binding assurance of the owner of a sports entertainment facility as defined in section 42-5032, subsection E, that the owner will reimburse the county for any and all expense the county may incur under subsection D, paragraph 4 of this section and section 42-5032, subsection B.

6. Be submitted to the joint legislative budget committee for its review before the execution of the agreement.

E. The department may enter into agreements with Indian tribes to provide a method or formula to refund taxes paid on exempt motor fuel purchases or use pursuant to this title. For the purposes of this subsection, "motor fuel" has the same meaning prescribed in section 28-5601.

F. The department may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 that obligates the department to indemnify and defend a city, town, county, flood control district, irrigation district or agricultural improvement district or any other political subdivision or governmental agency against claims of

liability for injuries, losses or damages incurred in any way as a result of the acts or omissions of the department, including acts, errors, omissions or mistakes of any person for which the department may be liable, and arising out of the construction, operation or maintenance of department projects or facilities or use of department projects or facilities. A city, town, county, flood control district, irrigation district or agricultural improvement district or any other political subdivision or governmental agency may enter into an intergovernmental agreement pursuant to title 11, chapter 7, article 3 that obligates such an entity to indemnify and defend the department against claims of liability for injuries, losses or damages incurred in any way as a result of the acts or omissions of such entity, including acts, errors, omissions or mistakes of any person for which the entity may be liable, and arising out of the construction, operation or maintenance of projects or facilities or use of projects or facilities. Any indemnification pursuant to an intergovernmental agreement must be approved by state risk management in the department of administration.

28-5602. Enforcement

The following persons have authority to enforce this article:

1. The director of the department of transportation and the director's duly appointed agents.

2. The associate director of the weights and measures services division of the Arizona department of agriculture and the associate director's duly appointed agents.

3. The department of public safety and its officers.

28-5605. Use fuel tax collection; fuel dispenser labels; civil penalty

A. A vendor shall not collect more than the use fuel tax imposed pursuant to section 28-5606, subsection B, paragraph 1 from a person who purchases use fuel for use in the propulsion of a light class motor vehicle on a highway in this state or for use in the propulsion of a use class motor vehicle that is exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 on a highway in this state.

B. Subject to the following, vendors shall label use fuel dispensers pursuant to standards established by the weights and measures services division of the Arizona department of agriculture:

1. Labels on use fuel dispensers shall notify the purchaser of the state use fuel tax rate. The department of transportation shall provide the use fuel dispenser labels to vendors.

2. If the vendor only sells use fuel to light class motor vehicles or use class motor vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433, or both, the vendor shall post that limitation and include the tax rate prescribed in section 28-5606, subsection B, paragraph 1.

3. If light class motor vehicles and use class motor vehicles are allowed to fuel at the same use fuel dispenser, the vendor shall include the tax rate prescribed in section 28-5606, subsection B, paragraph 2 and post a notice that the tax rate for light class motor vehicles and use class motor vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 is the tax rate prescribed in section 28-5606, subsection B, paragraph 1.

4. If the vendor prohibits light class motor vehicles or use class motor vehicles from dispensing fuel from a specific fuel dispenser, the vendor shall post that prohibition.

5. In addition to posting a sign on a use fuel dispenser that indicates that the price of the use fuel dispensed from that dispenser includes the applicable federal and state taxes, a vendor that dispenses use fuel from a cardlock facility shall require the purchaser of use fuel for light class motor vehicles or use class motor vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433, or both, to complete a declaration of status in a form and a manner approved by the director. For the purposes of this paragraph, "cardlock facility" means a use fuel vendor that satisfies all of the following:

(a) Is licensed in this state.

(b) Sells only to preapproved purchasers of use fuel who have been issued cards, keys or other controlled access to identify the exclusive withdrawal of that particular purchaser.

(c) Does not have a representative on the premises to observe the withdrawal of use fuel from the vendor's storage.

(d) Measures volumes of fuel dispensed by pump meters or other accurate recording devices.

C. A vendor who violates subsection B of this section is subject to a civil penalty of one hundred dollars for each day the violation continues.

28-5606. Imposition of motor fuel taxes

A. In addition to all other taxes provided by law, a tax of eighteen cents per gallon is imposed on motor vehicle fuel possessed, used or consumed in this state.

B. To partially compensate this state for the use of its highways:

1. A use fuel tax is imposed on use fuel used in the propulsion of a light class motor vehicle on a highway in this state at the same rate per gallon as the motor vehicle fuel tax prescribed in subsection A of this section, except that there is no use fuel tax on alternative fuels.

2. A use fuel tax is imposed on use fuel used in the propulsion of a use class motor vehicle on a highway in this state at the rate of twenty-six cents for each gallon, except that there is no use fuel tax on alternative fuels and use class vehicles that are exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 are subject to the use fuel tax imposed by paragraph 1 of this subsection.

3. Through December 31, 2024, a use fuel tax is imposed on use fuel used in the propulsion of a motor vehicle transporting forest products in compliance with the requirements of section 41-1516 on a highway in this state at the rate of nine cents for each gallon, except that there is no use fuel tax on alternative fuels.

C. The motor vehicle fuel and use fuel taxes imposed pursuant to this section and the aviation fuel taxes imposed pursuant to section 28-8344 are conclusively presumed to be direct taxes on the consumer or user but shall be collected and remitted to the department by suppliers for the purpose of convenience and facility only. Motor vehicle fuel, use fuel and aviation fuel taxes that are collected and paid to the department by a supplier are considered to be advance payments, shall be added to the price of motor vehicle fuel, use fuel or aviation fuel and shall be recovered from the consumer or user.

D. Motor vehicle fuel and use fuel taxes imposed pursuant to this section on the use of motor vehicle fuel and use fuel and the aviation fuel taxes imposed pursuant to section 28-8344 on the use of aviation fuel, other than by bulk transfer, arise at the time the motor vehicle, use or aviation fuel either:

1. Is imported into this state and is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this state.

2. Is removed, as measured by invoiced gallons, from the bulk transfer terminal system or from a qualified terminal in this state.

3. Is removed, as measured by invoiced gallons, from the bulk transfer terminal system or from a qualified terminal or refinery outside this state for delivery to a destination in this state as represented on the shipping papers if a supplier imports the motor vehicle, use or aviation fuel for the account of the supplier or the supplier has made a tax precollection election pursuant to section 28-5636.

E. If motor fuel is removed from the bulk transfer terminal system or from a qualified terminal or is imported into this state, the original removal, transfer or importation of the motor fuel is subject to the collection of the tax. If this motor fuel is transported to another qualified terminal or reenters the bulk transfer terminal system, the subsequent sale of the motor fuel on which tax has been collected is not subject to collection of an additional tax if proper documentation is retained to support the transaction.

28-5610. Exemptions

A. The following are exempt from motor vehicle fuel and use fuel taxes imposed by section 28-5606 and aviation fuel taxes imposed by section 28-8344:

1. Motor fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper or bill of lading and that is either:

(a) Exported by a supplier who is licensed in the destination state.

(b) Sold by a supplier to a distributor for immediate export.

2. Motor fuel that was acquired by a distributor, as to which the tax imposed by this article or section 28-8344 has previously been paid or accrued and that was subsequently exported by transport truck by or on behalf of the distributor in a diversion across state boundaries properly reported to the department. If diverted by a distributor, the distributor shall perfect the exemption by filing a refund application with the department within six months after the diversion.

3. Motor vehicle fuel or use fuel that is sold within an Indian reservation to an enrolled member of the Indian tribe who is living on the Indian reservation established for the benefit of that Indian tribe and that is used by the enrolled member for the enrolled member's own benefit. This exemption does not apply to sales within an Indian reservation by an Indian or Indian tribe to non-Indian consumers or to Indian consumers who are not members of the Indian tribe for which the Indian reservation was established or to use fuel used to operate motor vehicles for a commercial purpose outside of the reservation on highways in this state. For the purposes of this paragraph, "Indian" means an individual who is registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was created.

4. Motor vehicle fuel or use fuel used solely and exclusively as fuel to operate a motor vehicle on highways in this state if the motor vehicle is leased to or owned by and is being operated for the sole benefit of an Indian tribe for governmental purposes only.

5. Motor fuel that is moving in interstate or foreign commerce and that is not destined or diverted to a point in this state.

6. Motor vehicle or aviation fuel that is sold to the United States or an instrumentality or agency of the United States.

7. Taxable use fuel that has been accidentally contaminated so as to be unsalable as highway fuel as proved by proper documentation.

8. Dyed diesel fuel, including fuel used by either of the following:

(a) A farm tractor or implement of husbandry designed primarily for or used in agricultural operations and only incidentally operated or moved on a highway.

(b) A road roller or vehicle that is all of the following:

(i) Designed and used primarily for grading, paving, earthmoving or other construction work on a highway.

(ii) Not designed or used primarily for transportation of persons or property.

(iii) Incidentally operated or moved over the highway.

B. A use class vehicle shall pay the use fuel tax for light class motor vehicles prescribed by section 28-5606, subsection B, paragraph 1 if the vehicle is a truck and satisfies all of the following:

1. Is at least twenty-five years old.

2. Has been issued a historic vehicle license plate pursuant to section 28-2484.

3. Is not used as a commercial vehicle.

C. Notwithstanding subsection A, paragraph 8 of this section, the following are not exempt from use fuel taxes imposed by section 28-5606:

1. A vehicle that was originally designed for the transportation of persons or property and to which machinery is attached or on which machinery or other property may be transported.

2. A dump truck.

3. A truck mounted transit mixer.

4. A truck or trailer mounted crane.

5. A truck or trailer mounted shovel.

D. Except as provided in subsections E and F of this section, a person who claims an exemption pursuant to this section shall perfect the exemption by claiming a refund pursuant to section 28-5612.

E. Subject to sections 28-5645, 28-5646, 28-5647, 28-5648, and 28-5649, dyed diesel fuel is exempt from use fuel taxes at the time of sale.

F. Motor fuel that originates outside this state, is moving in interstate or foreign commerce and is not destined or diverted to a point in this state is exempt from motor fuel taxes as the motor fuel travels across this state.

28-5611. Refunds; motor vehicle fuel

A. Except as provided in subsection B of this section, on application to the director pursuant to this article and if section 28-5612 is complied with, a person who buys and uses motor vehicle fuel shall receive a refund in the amount of the tax if the person pays the tax on the fuel and either:

1. Uses the fuel other than in any of the following:

(a) A motor vehicle on a highway in this state.

(b) Watercraft on the waterways of this state.

(c) A motor vehicle operating on a transportation facility or toll road pursuant to chapter 22 of this title.

2. Buys aviation fuel for use in aircraft applying seeds, fertilizer or pesticides.

3. Loses the fuel by fire, theft or other accident.

B. If a claim for refund is based on the use of motor vehicle fuel in aircraft, five cents of the tax collected on each gallon of motor vehicle fuel claimed shall remain in the state aviation fund, and the department shall refund the remainder of the tax pursuant to section 28-5612.

28-5612. Refund procedure; violation

A. A person who is seeking a refund and who is not licensed as a supplier, interstate user, restricted distributor or use fuel vendor shall:

1. File an application with the director within six months after the date of sale.

2. Submit proof satisfactory to the director of the following:

(a) The purpose for which the fuel was used.

(b) The tax paid purchase.

3. Make an application in a form prescribed by the department that requests the following information:

(a) Name and address of the claimant.

(b) Period covered by the claim showing dates.

(c) Location of equipment, if applicable.

(d) Gallons on which a refund is claimed.

(e) Amount of the refund claimed.

(f) Other information required by the director.

B. The claim shall not be under oath but shall contain or be accompanied by a written declaration that it is made under penalties of perjury and, if it is for motor vehicle fuel, that it complies in all respects with section 28-5611 relating to refunds.

C. The original invoice or a duplicate that is satisfactory to the director and that includes the following information shall accompany the application:

1. The date of purchase.

2. The seller's name and address.

3. The number of gallons purchased.

4. The type of fuel purchased.

5. The price per gallon of the fuel.

6. Other information required by the director.

D. If a person files a claim for a refund pursuant to this section for motor fuel exported, the person shall make satisfactory proof of export to the director and file the claim within three months after the date of export in the form and containing the information required by the director. The original invoice or an acceptable duplicate shall accompany the claim.

E. The director shall accept only one application for refund of motor fuel taxes for any one person within a six month period if the aggregate total of all motor fuel taxes paid and for which a refund is claimed does not equal at least ten dollars.

F. If a person who is exempt from use fuel taxes pursuant to section 28-5610 submits a claim for a refund pursuant to this section for use fuel taxes, the department shall not pay the refund until the department determines the difference between the amount of the refund and the amount of the use tax that is imposed under title 42, chapter 5, article 4 on the fuel exempt from use fuel taxes if owed by the person. If the department determines that the amount of the refund is greater than the amount owed for the use tax, the department shall deposit the amount owed for the use tax pursuant to subsection M of this section and refund the amount of the difference to the person. If the department determines that the amount of the refund is less than the amount owed for the use tax, the department shall forward any balance due information to the department of revenue for collection.

G. Except as provided in subsection F of this section, if the director does not issue a refund within sixty days after a complete application for refund is filed as prescribed in this article, the director shall pay interest at the rate of eleven per cent per year from the date the complete application for refund is filed until the date on which the refund is made.

H. If the director denies a refund, the director shall notify the claimant that the refund is denied. The director's denial is final unless the applicant makes a written request for a hearing as prescribed in section 28-5924.

I. It is unlawful for a person to knowingly operate a motor vehicle on the highways or a watercraft on the waterways using motor vehicle fuel or use fuel that has been sold to a person making a claim pursuant to this section.

J. In addition to other penalties prescribed by law, the director shall not give a person who violates this section a refund on motor fuel purchased during the six months succeeding the date the director advises the person by mail of the director's discovery of the violation.

K. A person whose right to a refund is suspended may bring an action in superior court in Maricopa County to set aside the suspension.

L. The director may recover excess refunds from the person to whom the refund was made. The director shall assess the claimant the amount of the excess refund and interest. The director shall compute interest at one per cent per month of the amount of excess refund due beginning on the date of refund and until the date the assessment is paid.

M. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, use tax revenues collected pursuant to subsection F of this section in the state general fund by the end of each month and notify the department of revenue of the amount of use tax collected each month.

28-5613. Licensee refunds; definition

A. A licensee who is seeking a refund shall apply pursuant to section 28-5612, except that a licensee shall file an application for refund within three years after the date of purchase or invoice of the motor fuel for which a refund is claimed.

B. For the purposes of this section, "licensee" includes a supplier, an interstate user, a restricted distributor or a licensed use fuel vendor.

28-5614. Refunds; use fuel

A. If a vendor pays the use fuel tax rate for use class motor vehicles on use fuel that is actually used in the propulsion of a light class motor vehicle on a highway in this state or that is actually used in the propulsion of a use class motor vehicle that is exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 on a highway in this state and for the purpose of convenience and facility only, the vendor may apply to the department for a refund of the difference between the amount of the use class motor vehicle use fuel tax paid and the amount of the light class motor vehicle use fuel tax on the same number of gallons purchased.

B. If a person who transports forest products on a highway in this state in compliance with the requirements of section 41-1516 pays the use fuel tax rate prescribed in section 28-5606, subsection B, paragraph 2 for a use class motor vehicle that is eligible for the use fuel tax rate prescribed in section 28-5606, subsection B, paragraph 3, the person may apply to the department for a refund of the difference between the amount of the use fuel tax paid and the use fuel tax rate prescribed for a motor vehicle transporting forest products.

C. The director may prescribe any forms the director deems necessary to implement this section.

D. A vendor may file an application for a refund pursuant to this section either:

1. On a monthly basis subject to the limitations prescribed in section 28-5612.

2. If the amount of the requested refund is at least seven hundred fifty dollars, except that a vendor shall not file an application for a refund pursuant to this paragraph more frequently than once each week.

E. The director shall:

1. Pay the refund from current use fuel tax receipts.

2. Deduct the refund from the monthly use fuel tax receipts before the deposit pursuant to section 28-5730 is made.

28-5615. Presumption of use

A. For the proper administration of this article and to prevent evasion of the use fuel tax, it is presumed, until the contrary is established by competent proof under rules and procedures the director adopts, that all use fuel received into any receptacle on a motor vehicle from which fuel is supplied to propel the vehicle is consumed in propelling the vehicle on the highways in this state.

B. If a vendor's dealings in use fuel primarily involve delivery of use fuel into the fuel tanks of motor vehicles it is presumed, until the contrary is established by competent proof under procedures the director adopts, that the vendor's total use fuel acquisitions have been delivered into the fuel tanks of motor vehicles for the propulsion of the vehicles on the public highways.

28-5616. Light class motor vehicles

With respect to light class motor vehicles, the director shall not:

1. Issue a refund for use fuel purchased in this state and consumed on the highways of another state.

2. Tax use fuel acquired in another state and consumed on the highways in this state.

28-5618. Report requirements

A. On or before the twenty-seventh day of each month, a supplier shall file with the director a true and verified statement in a form prescribed by the director showing:

1. The total number of gallons of motor vehicle fuel or aviation fuel, blended, imported, exported or acquired during the preceding calendar month.

2. The number of gallons of motor vehicle fuel or aviation fuel sold or otherwise disposed of by the supplier for use in each of the several counties of this state.

3. The total number of gallons of motor vehicle fuel that is included in this subsection and that is intended for use in aircraft.

4. Other information the director requires.

B. In addition to making the statement required in subsection A and if the supplier received an interstate shipment of motor vehicle fuel during the preceding month, the supplier shall report on or before the twenty-seventh day of each month to the director in a form prescribed by the director:

1. The quantity and particular description of the fuel received by interstate shipment and delivered intercounty.

2. The name of the consignor and consignee.

3. The date shipped.

4. The date received.

5. How it was shipped.

6. Other information the director requires.

C. A supplier may amend a report filed pursuant to this section within three years after the date the original tax report was filed unless the report for the period is final due to an audit.

D. If an amended report results in a reduction in taxes paid, the department shall credit the licensee's account unless the licensee files a written request for a refund.

28-5619. Records required; violation; classification

A. Suppliers and restricted distributors shall maintain and keep records of motor vehicle fuel or aviation fuel received, acquired, used, sold and delivered in this state by the supplier or restricted distributor, the amount of tax paid as part of the purchase price, invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article at least until the later of the following:

1. Three years after a report is required to be filed pursuant to this article.

2. Three years after a report is filed.

B. Any person, other than a restricted distributor, purchasing motor vehicle fuel taxable under this article or aviation fuel taxable under section 28-8344 from a supplier for the purpose of resale shall maintain and keep for one year a record of motor vehicle fuel or aviation fuel received, the amount of tax paid to the supplier as part of the purchase price, delivery tickets, invoices, bills of lading and other records the director requires.

C. Each distributor and vendor shall maintain and keep for three years the following:

1. Records of use fuel received, sold or delivered in this state by the distributor or vendor.

2. Invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article.

D. The director may require distributors to file information as to sales or deliveries to vendors or users of use fuel at the times and in the form as the director requires.

E. A person who violates this section is guilty of a class 1 misdemeanor.

28-5620. Records and equipment inspections; hearings; use restrictions; violation; costs

A. The director or a deputy, employee or agent authorized by the director may examine during usual business hours records, books, papers, storage tanks and any other equipment of a person pertaining to motor fuel imported, received, sold, shipped, delivered or used to either:

1. Verify the truth and accuracy of a statement, report, return or claim.

2. Ascertain whether the tax imposed by this article or section 28-8344 has been paid.

3. Determine the financial responsibility of the supplier for the payment of the taxes imposed by this article or section 28-8344.

4. Determine the validity of a refund.

B. In the enforcement of this article, the director may hold hearings, take testimony of persons, issue subpoenas for the purpose of taking testimony, compel attendance of witnesses and conduct investigations the director deems necessary.

C. The director may prescribe forms for required reports or claims for refund or forms of record to be used by suppliers, distributors, restricted distributors, vendors or refund claimants.

D. Records required by this article may be maintained in this state. If the records are maintained outside this state and on request of the director, the records shall be made available at a location in this state designated by the director. If the records are maintained outside this state and will not be made available at the location designated by the director, the director may require the person to whom a records request has been made to pay in advance costs reimbursable for subsistence and travel expenses for the director or an agent of the director to conduct the examination of the records.

28-5621. Failure to report or pay tax; penalties; interest; transmittal date

A. Except as otherwise provided in this subsection, if a supplier fails to submit the monthly report to the director on or before the twenty-seventh day of the month, fails to submit the data or information required under this article in the monthly report or fails to pay the amount of taxes due when payable, the supplier shall pay interest on the unpaid tax at the rate of one per cent per month or portion of a month from the due date until paid and a penalty of five per cent shall be added to any tax not paid on or before the day prescribed for the payment of the tax. A supplier is not subject to the five per cent penalty on transactions reported within ninety days after the due date if the supplier has paid at least ninety-nine and one-half per cent of the actual tax liability for the month by the due date.

B. In addition to the penalty provided by subsection A, a person who fails to file a report required by this section when due shall pay an additional penalty of twenty-five dollars.

C. If a report or remittance required by this article is transmitted through the United States mail and is not received by the director until after the date on which the report is required to be filed or the payment was required to be made and if the envelope in which the report or remittance is enclosed has a post office cancellation mark dated on or before that date, on receipt of the envelope, the director shall treat the report or remittance as if it had been received on the required date.

28-5622. Tax estimate

If a person neglects or refuses to make and file a report as required by this article, or files an incorrect or fraudulent report, the director shall determine from information obtainable in the director's office or elsewhere the number of gallons of motor fuel with respect to which the person has incurred liability under this article or section 28-8344.

28-5623. Civil penalty; use fuel purchaser; vendor refund; financial penalty prohibited; subsequent violations

A. Notwithstanding any other law, if a person intentionally purchases use fuel for use in a use class motor vehicle that is not exempt pursuant to section 28-5432 from the weight fee prescribed in section 28-5433 and the person pays the use fuel tax rate for a light class motor vehicle, all of the following apply:

1. Except as provided in subsection B of this section, the person is subject to a civil penalty of one thousand dollars or ten dollars for each gallon of use fuel dispensed, whichever is greater, and shall pay to the department the difference between the amount of light class motor vehicle use fuel tax paid and the amount of the use class motor vehicle use fuel tax on the same number of gallons purchased.

2. The department may not deny a refund requested by a vendor pursuant to section 28-5614 for that purchase.

3. The department shall not impose any penalty, including a financial penalty of any kind, on a vendor for that purchase if the purchase was determined as a result of any inquiry, including any audit process.

B. For a second or subsequent violation, the civil penalty shall be determined by multiplying the amount prescribed in subsection A of this section by the number of prior violations.

C. A vendor shall not be liable for the civil penalty imposed by this section provided the vendor is not the owner or operator of the vehicle into which the fuel was dispensed or conspired with the purchaser to evade the proper tax rate.

28-5625. Restricted distributor licenses; reports; violation; classification

A. A person shall obtain a license and report pursuant to subsection D of this section as a restricted distributor of motor vehicle fuel from the director if all of the following apply:

1. The person transports for sale motor vehicle fuel to another county from the county that was originally reported by the supplier.

2. The person purchases or otherwise acquires motor vehicle fuel in tank car or cargo lots.

3. The person sells the motor vehicle fuel for delivery in this state or export from this state.

4. The person is not required by this article to be licensed as a supplier.

B. To obtain a restricted distributor license, a person shall file with the director an application that contains the following:

1. The name under which the person is transacting business in this state.

2. The address of the person's principal office or place of business in this state.

3. The name and address of the owner, the names and addresses of the partners if the restricted distributor is a partnership or the names and addresses of the principal officer if the restricted distributor is a corporation or association.

4. Other information the director requires.

C. If the application is in proper form and is accepted for filing, the director shall issue to the applicant a license to transact business as a restricted distributor in this state subject to cancellation as provided by law.

D. A restricted distributor shall report on or before the twenty-seventh day of each month to the director in a form prescribed by the director:

1. The quantity of motor vehicle fuel acquired during the preceding calendar month.

2. The disposition of the motor vehicle fuel for use in each of the several counties.

3. The name of the consignor and consignee.

4. The date shipped.

5. The date received.

6. How it was shipped.

7. Other information the director requires.

E. A restricted distributor may amend a report filed pursuant to this section within three years after the date the original tax report was filed unless the report for the period is final due to an audit.

F. If a restricted distributor files a false report or fails, refuses or neglects to file a report pursuant to subsection D of this section, the director may cancel the restricted distributor's license and notify the restricted distributor of the cancellation by regular mail at the last known address of the restricted distributor appearing in the department's records.

G. If a restricted distributor ceases to engage in business as a restricted distributor in this state by reason of discontinuance, sale or transfer of the business, the restricted distributor shall notify the director in writing at least ten days before the discontinuance, sale or transfer takes effect. If the restricted distributor sells or transfers the business, the restricted distributor shall include the name and address of the purchaser or transferee in the notice to the director.

H. A person who is required to be licensed as a restricted distributor of motor vehicle fuel pursuant to this section and who fails to obtain a license is guilty of a class 1 misdemeanor.

28-5626. Suppliers; vendors; licenses required

A. Except as provided in section 28-5607, a person who acts as a distributor and who possesses motor fuel on which fuel taxes have not been accrued or collected by a supplier shall be licensed as a supplier.

B. It is unlawful for a person to engage in business in this state as a supplier, unless the person has a license issued by the director to engage in that business.

C. A person who sells use fuel for delivery directly into a vehicle fuel tank shall also be licensed as a vendor and shall maintain separate business records.

28-5924. Hearing; rehearing

A. A person aggrieved by an assessment, decision or order of the director under this chapter may make a written request for a hearing in the office of the director within thirty days after service of the notice to show cause why the assessment, decision or order is in error or to present any other facts or testimony that is relevant. A written request for a hearing shall include the reasons why the assessment, decision or order of the director is in error. Only the reasons set forth in the request for hearing may be raised at the hearing. The hearing may be continued from time to time.

B. If the person does not request a hearing within thirty days, the assessment, decision or order is final.

C. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the person of the director's finding and order. Within ten days after service of the notice of the finding and order of the hearing, the person may request in writing a rehearing on the matter. The director may grant a request for a rehearing based on rules adopted by the director relating to conditions for rehearings.

D. If the person does not request a rehearing or if the director denies the request for a rehearing, the assessment, decision or order is final ten days after the notice is served.

28-5925. Payment; distribution

A. The supplier, as shown in the records of the terminal operator, who removes the taxable gallons shall precollect and remit on behalf of consumers and users to the department the taxes that are imposed by sections 28-5606 and 28-8344 and that are measured by the invoiced gallons of motor fuel removed by a licensed supplier from a terminal or refinery in this state other than a bulk transfer.

B. The supplier and each reseller shall list the amount of tax as a separate line item on all invoices or billings or as a separate billing.

C. The motor fuel tax that is accrued in any calendar month shall be paid on or before the twenty-seventh day of the next succeeding calendar month to the director.

D. A supplier shall remit any late taxes remitted to the supplier by an eligible purchaser and shall notify the department in a timely manner of any late remittances if that supplier has previously given notice to the department of an uncollectible tax amount pursuant to section 28-5639, subsection B.

E. On payment, the director shall promptly:

1. Deposit motor fuel tax monies as prescribed in sections 28-5926 and 28-5927.

2. Deposit, pursuant to sections 35-146 and 35-147, all remaining motor fuel tax monies in the Arizona highway user revenue fund or the state aviation fund as determined from the reports filed pursuant to section 28-5618.

F. The director shall deduct all exemptions and refunds before depositing the monies.

ARIZONA MEDICAL BOARD
Title 4, Chapter 16, Article 7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: March 14, 2023

SUBJECT: **ARIZONA MEDICAL BOARD**
Title 4, Chapter 16, Article 7

Summary

This Five-Year Review Report (5YRR) from the Arizona Medical Board (Board) relates to seven (7) rules in Title 4, Chapter 6, Article 7 regarding Office-Based Surgery Using Sedation. Specifically, these rules provide guidance to licensees regarding acceptable use of sedation in office-based surgery.

In the prior report for these rules, which was approved by the Council in August 2018, the Board indicated it would amend a rule for *de minimis* clarifications. Specifically, the Board indicated it received comments outlining the following issues with clarity in the rules:

- **R4-16-701:** Apparent inconsistency regarding use of "general anesthesia" and "sedation;"
- **R4-16-702 and R4-16-703**: It is not clear that the individual administering general anesthesia or different levels of sedation is required to have specific training in providing general anesthesia or sedation; and
- **R4-16-706:** It is not clear what amount of space is necessary to accommodate equipment during a procedure using sedation.

Furthermore, the Board indicated rule R4-16-707(B) contained a typographical error.

The Board indicated in its 2018 report that it would submit a rulemaking package to the Council addressing the concerns outlined above by December 2019. However, the Board indicates in the present report that, due to the rulemaking moratorium and the *de minimis* nature of the potential adjustments, the Board did not submit a rule package to the Council.

Proposed Action

In the current report, the Board intends to update the typographical error in rule R4-16-707(B), previously identified in the Board's August 2018 report. The Board states it intends to submit a rulemaking package to the Council by December 2023. It does not appear, the Board intends to amend any of the other rules outlined in the August 2018 report to improve clarity.

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

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:

The Board believes the economic, small business, and consumer impact of the rules is as estimated when the rules were made in 2008.

Stakeholders identified include the Board, licensed physicians who perform office-based surgery, health care professionals, and patients. The Board currently licenses 28,165 physicians.

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?

According to the Board, the benefits of the rules outweigh the costs as they impose the least burden and cost possible to achieve the goal of protecting public health and safety. The Board clarifies that while they license physicians, a licensee is not required to perform office-based surgery using sedation. A licensee who voluntarily chooses to perform office-based surgery using sedation has determined the benefit of doing so outweighs the cost of compliance with the rules.

Council staff notes that the analysis required by A.R.S. § 41-1056(A)(9) is not whether the licensees voluntarily engage in the regulated activity as evidence that the benefits outweigh the costs, but whether "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." Because licensees engage in a regulated activity, does not mean the rule imposes the least burden and costs necessary to achieve the underlying regulatory objective. Additionally, it appears licensees have raised concerns about clarity regarding the rules as indicated in public comments outlined in the previous 5YRR for these rules and in the section below.

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

The Board indicates it received one written criticism regarding the rules from Dr. William C. Thompson of the Arizona Society of Anesthesiologists who stated that rule R4-16-704(2)(b) regarding ventilator function monitoring during moderate or deep sedation should be updated. A copy of the written criticism from Dr. Thompson is included with the final materials for the Council's reference.

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

The Board indicates the rules are mostly clear, concise, and understandable except that rule R4-16-707(B) contains a typographical error and should be corrected to read:

> B. When performing office-based surgery using sedation, a physician shall not use any drug or agent that is known to trigger malignant hyperthermia.

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

The Board indicates the rules are consistent with other rules and statutes.

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

The Board indicates the rules are effective in achieving their objectives.

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

The Board indicates the rules are currently 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?

The Board indicates there are no federal laws specifically applicable to these rules, though there are numerous federal statutes applicable to the provision of health care.

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 Board indicates all rules under review were adopted prior to July 29, 2010. As such, the Board is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Board relates to seven rules in Title 4, Chapter 6, Article 7 regarding Office-Based Surgery Using Sedation. Specifically, these rules provide guidance to licensees

regarding acceptable use of sedation in office-based surgery. The Board indicates the rules are consistent, effective, and enforced as written. However, the Board indicates the rules could be made more clear, concise, and understandable and proposes to update rule R4-16-707(B) to correct a typographical error.

Additionally, the Board outlined several rules in its prior August 2018 5YRR that commenters indicated were not clear, concise, and understandable and stated it would submit a rulemaking package to the Council to address those issues by December 2019. However, the Board did not complete its prior proposed course of action and does not list the previous rules in the current proposed course of action.

Council staff recommends the Council discuss with the Board whether the rules previously identified as not being clear, concise, and understandable in the Board's 2018 5YRR, should be included in the current proposed course of action to be addressed alongside rule R4-16-707(B).

Arizona Medical Board

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January 31, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Medical Board
Five-year-review Report
4 A.A.C. 16, Article 7

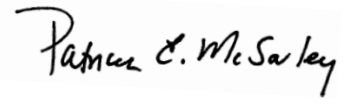
Dear Ms Sornsin:

The Board submits the referenced 5YRR for the Council's review and approval. The report is due to be submitted by January 31, 2023.

The Board complies with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Patricia McSorley, at 480-551-2791 or Patricia.McSorely@azmd.gov.

Sincerely,



Patricia McSorley
Executive Director

ARIZONA MEDICAL BOARD

Five-year-review Report: A.A.C. Title 4, Chapter 16, Article 7
(Office-Based Surgery Using Sedation)

REVISED AS OF APRIL 3, 2023

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 16. Arizona Medical AMB
Article 7. Office-Based Surgery Using Sedation

INTRODUCTION

The Arizona Medical Board's (AMB's) mission is to protect public safety through the judicious licensing, regulation, and education of all allopathic physicians. A.R.S. § 32-1403(A) indicates the primary duty of the AMB is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine. Allopathic medicine is the system of medical practice that treats disease by using remedies that produce effects different from or incompatible with those produced by the disease under treatment. Each allopathic physician licensed by the AMB is called a 'licensee' below. The AMB staff have undertaken a review of Article 7 and report the review findings and plan for potential rule changes below.

Under A.R.S. § 32-1401, it is unprofessional conduct for a physician to perform office-based surgery using sedation in violation of the AMB's rules. The rules in 4 A.A.C. 16, Article 7 were initially made in 2008 to provide guidance to licensees regarding acceptable use of sedation in office-based surgery. They have not been amended since being made.

Statute that generally authorizes the agency to make rules: A.R.S. §§ 32-1403(A)(8) and 32-1404(D)

1. Specific statute authorizing the rule: All the rules in this Article are specifically authorized under A.R.S. § 32-1401(20) and (27)(uu).

2. Objective of the rules:

R4-16-701. Health Care Institution License: The objective of the rule is to specify the circumstances under which a physician who performs surgery in the physician's office or other outpatient setting using general anesthesia must obtain a license as a health care institution.

R4-16-702. Administrative Provisions: The objective of the rule is to specify prerequisites including written policies and procedures, education, training, and experience of staff that assist or participate in office-based surgery, necessary equipment, patients' rights, and informed consent, with which a physician must comply before performing office-based surgery using sedation. The purpose is to protect public health and safety.

R4-16-703. Procedure and Patient Selection: The objective of the rule is to specify factors the physician is required to consider when choosing a surgical procedure to perform in an office-based environment using sedation and when choosing a patient on whom to perform a surgical procedure in an office-based environment using sedation. The purpose is to protect public health and safety.

R4-16-704. Sedation Monitoring Standards: The objective of the rule is to require a physician performing office-based surgery using sedation to ensure use of a quantitative method, performed by a licensed health-care professional other than the physician, to assess the patient's oxygenation, ventilator function, circulatory function, and temperature during the surgery. The purpose is to protect public health and safety.

R4-16-705. Perioperative Period; Patient Discharge: The objective of the rule is to require a physician to be physically present in the room in which office-based surgery is performed using sedation and to be physically present and able to respond to an emergency during the period of post-sedation monitoring. The rule also requires a patient be instructed regarding discharge and that the discharge be properly documented. The purpose is to protect public health and safety.

R4-16-706. Emergency Drugs: Equipment and Space Used for Office-Based Surgery Using Sedation: The objective of the rule is to require the office in which office-based surgery is performed using sedation be large enough to accommodate all equipment, including a supply of emergency drugs and equipment, required to perform the surgery safely. The rule also requires all equipment used in office-based surgery be maintained according to the manufacturer's instructions. The purpose is to protect public health and safety.

R4-16-707. Emergency and Transfer Provisions: The objective of the rule is to require a physician who performs office-based surgery using sedation to ensure that all staff who assist or participate in the surgery are instructed in emergency procedures including safe and timely patient transfer. The purpose is to protect public health and safety.

3. Are the rules effective in achieving their objectives?

   Yes. The rules are to protect the health and a safety of the public on whom allopathic physician performs an office-based surgery.

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

   The AMB concluded the rules are consistent with state statute and other rules made by the AMB (See 4 A.A.C. 16). There are no federal statutes specifically applicable to these rules although there are numerous federal statutes applicable to the provision of health care.

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable?

   Yes, mostly. A typographical error was identified in 2018 in R4-16-707(B) and will be corrected to read:

   B. When performing office-based surgery using sedation, a physician shall not use any drug or agent that is known to trigger malignant hyperthermia.

Also a review of the 2018 Five Year Review Report indicated that the Agency would make the following adjustments:

R4-16-701: apparent inconsistency regarding use of "general anesthesia" and "sedation;"
R4-16-702 and R4-16-703: it is not clear that the individual administering general anesthesia. or different levels of sedation is required to have specific training in providing general. anesthesia or sedation; and
R4-16-706: it is not clear what amount of space is necessary to accommodate equipment. during a procedure using sedation.

The Agency will seek public and stakeholder comments from practitioners as these are clarifications that will need input from those practicing sedation and setting safety standards.

The clarifications from 2018 will be addressed in the formal rulemaking process arising from this 2023 Five Year Review of Article 7. If no rule changed is proposed, the Agency will make note as to why a determination was made not to make a rule change.

7. Has the agency received written criticisms of the rules within the last five years? Yes

Dr. William C. Thompson of the Arizona Society of Anesthesiologists indicated that R4-16-704(2)(b) regarding ventilator function monitoring during moderate or deep sedation should be updated.

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

No change. The AMB currently licenses 28,165 physicians. Licensees are not required to obtain a permit to perform office-based surgery involving sedation. As such, the AMB does not know how many licensees perform office-based surgery involving sedation. It is generally within a licensee's scope to perform office-based surgery involving sedation if they choose and follow the prescribed Rules. It is reported that the proportion of outpatient surgical procedures performed outside a hospital setting has increased from <10 percent in

1979 to approximately 60 percent, with 15 to 20 percent performed in office-based settings [1]." Osman BM, Shapiro FE. Office-Based Anesthesia: A Comprehensive Review and 2019 Update. Anesthesiol Clin 2019; 37:317. Outpatient surgical procedures of this nature are predicted to grow as advances in anesthetics and minimally invasive procedures make office-based surgery increasingly possible. Procedures frequently performed in an office under sedation include removal of a mole or skin cancer, breast augmentation or reduction, liposuction, hernia repair, knee arthroscopy, and tonsillectomy. Licensees who choose to perform office-based surgery involving sedation must comply with the standards established in rule to protect public health and safety. Insurance may cover some or all the cost for an individual.

There is always a risk when a patient undergoes sedation and anesthesia altering a patient's level of consciousness. The rules as they exist require adherence to acceptable standards of care by addressing patient selection, patient discharge equipment and emergency provisions. Because of the possible serious outcomes to a patient's health and safety , if the rules are not followed, the cost to the physician to comply with the rules is minimal in compared to the financial cost and cost to the patient if a bad outcome arises from lack of compliance.in terms of health and safety along with basic outcomes for lack of compliance. Patient health and safety is paramount and outweighs any costs.

9. Has the agency received any business competitiveness analyses of the rules? No

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

While the AMB indicated it thought it would potentially amend rule for de minimis clarifications and the AMB did not submit a rule package to the Council.

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:

The AMB determined the probable benefits of the rules outweigh their costs and they impose the least burden and cost possible to achieve the goal of protecting public health and safety. A licensee is not required to perform office-based surgery using sedation. A licensee who voluntarily chooses to perform office-based surgery using sedation has determined the benefit of doing so outweighs the cost of compliance with the rules. This includes the possibility of needing to have the place where office-based surgery is performed licensed by the Department of Health Services, preparing and implementing written policies and procedures, ensuring staff is qualified and sufficiently trained, having a licensed and qualified healthcare professional other than the licensee present throughout the office-based surgery, having necessary equipment, space, and drugs, obtaining informed consent from patients, and complying with all applicable laws.

There is always a risk when a patient undergoes sedation and anesthesia altering a patient's level of consciousness. The rules as they exist require adherence to acceptable standards of care by addressing patient selection, patient discharge equipment and emergency provisions. Because of the possible serious outcomes to a patient's health and safety, if the rules are not followed, the cost to the physician to comply with the rules is minimal in compared to the financial cost and cost to the patient if a bad outcome arises from lack of compliance for lack of compliance. Patient health and safety is paramount and outweighs any costs.

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

There is no corresponding federal law.

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

All of the rules were made before July 29, 2010.

14. Proposed course of action:

The AMB intends to amend the applicable rules that are to be updated per the above. Additionally, the AMB has plans to review any public comments and determine if amending such rules is advised. The AMB will submit the amended rules to the Council by December 2023.

ARIZONA MEDICAL BOARD

Five-year-review Report: A.A.C. Title 4, Chapter 16, Article 7
(Office-Based Surgery Using Sedation)

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 16. Arizona Medical Board
Article 7. Office-Based Surgery Using Sedation

INTRODUCTION

The Arizona Medical Board's (AMB's) mission is to protect public safety through the judicious licensing, regulation, and education of all allopathic physicians. A.R.S. § 32-1403(A) indicates the primary duty of the AMB is to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine. Allopathic medicine is the system of medical practice that treats disease by using remedies that produce effects different from or incompatible with those produced by the disease under treatment. Each allopathic physician licensed by the AMB is called a 'licensee' below. The AMB staff has undertaken a review of Article 7 and report the findings and plan for potential rule changes below.

Under A.R.S. § 32-1401, it is unprofessional conduct for a physician to perform office-based surgery using sedation in violation of the AMB's rules. The rules in 4 A.A.C. 16, Article 7 were initially made in 2008 to provide guidance to licensees regarding acceptable use of sedation in office-based surgery. They have not been amended since being made.

Statute that generally authorizes the agency to make rules: A.R.S. §§ 32-1403(A)(8) and 32-1404(D)

1. Specific statute authorizing the rule: All the rules in this Article are specifically authorized under A.R.S. § 32-1401(20) and (27)(uu).

2. Objective of the rules:

R4-16-701. Health Care Institution License: The objective of the rule is to specify the circumstances under which a physician who performs surgery in the physician's office or other outpatient setting using general anesthesia must obtain a license as a health care institution.

R4-16-702. Administrative Provisions: The objective of the rule is to specify prerequisites including written policies and procedures, education, training, and experience of staff that assist or participate in office-based surgery, necessary equipment, patients' rights, and informed consent, with which a physician must comply before performing office-based surgery using sedation.

R4-16-703. Procedure and Patient Selection: The objective of the rule is to specify factors the physician is required to consider when choosing a surgical procedure to perform in an office-based environment using sedation and when choosing a patient on whom to perform a surgical procedure in an office-based environment using sedation.

R4-16-704. Sedation Monitoring Standards: The objective of the rule is to require a physician performing office-based surgery using sedation to ensure use of a quantitative method, performed by a licensed health-care professional other than the physician, to assess the patient's oxygenation, ventilator function, circulatory function, and temperature during the surgery.

R4-16-705. Perioperative Period; Patient Discharge: The objective of the rule is to require a physician to be physically present in the room in which office-based surgery is performed using sedation and to be physically present and able to respond to an emergency during the period of post-sedation monitoring. The rule also requires a patient be instructed regarding discharge and that the discharge be properly documented.

R4-16-706. Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation: The objective of the rule is to require the office in which office-based surgery is performed using sedation be large enough to accommodate all equipment, including a supply

of emergency drugs and equipment, required to perform the surgery safely. The rule also requires all equipment used in office-based surgery be maintained according to the manufacturer's instructions.

R4-16-707. Emergency and Transfer Provisions: The objective of the rule is to require a physician who performs office-based surgery using sedation to ensure that all staff who assist or participate in the surgery are instructed in emergency procedures including safe and timely patient transfer.

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

The Board determined the rules are effective in achieving their objectives. It bases this conclusion on the fact the rules protect the health and safety of patients on whom a licensee performs office-based surgery. Since the rules were made in 2008, the Board has received no complaints regarding office-based surgery involving sedation.

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

The AMB concluded the rules are consistent with state statute and other rules made by the AMB (See 4 A.A.C. 16). There are no federal statutes specifically applicable to these rules although there are numerous federal statutes applicable to the provision of health care.

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Mostly yes

A typographical error was identified in 2018 in R4-16-707(B) and will be corrected to read:

B. When performing office-based surgery using sedation, a physician shall not use any drug or agent that is known to trigger malignant hyperthermia.

7. Has the agency received written criticisms of the rules within the last five years? Yes

Dr. William C. Thompson of the Arizona Society of Anesthesiologists indicated that R4-16-704(2)(b) regarding ventilator function monitoring during moderate or deep sedation should be updated.

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

The Board believes the economic, small business, and consumer impact of the rules is as was estimated when the rules were made in 2008.

The AMB currently licenses 28,165 physicians. Licensees are not required to obtain a permit to perform office-based surgery involving sedation. As such, the AMB does not know how many licensees perform office-based surgery involving sedation. It is generally within a licensee's scope to perform office-based surgery involving sedation if the licensee chooses to do so and follows the prescribed rules. It is reported that the proportion of surgical procedures performed outside a hospital setting has increased from <10 percent in 1979 to approximately 60 percent, with 15 to 20 percent performed in office-based settings [1]." Osman BM, Shapiro FE. Office-Based Anesthesia: A Comprehensive Review and 2019 Update. Anesthesiol Clin 2019; 37:317. Outpatient surgical procedures of this nature are predicted to grow as advances in anesthetics and minimally invasive procedures make office-based surgery increasingly possible. Procedures frequently performed in an office under sedation include removal of a mole or skin cancer, breast augmentation or reduction, liposuction, hernia repair, knee arthroscopy, and tonsillectomy. Licensees who choose to perform office-based surgery involving sedation must comply with the standards established in rule to protect public health and safety. Insurance may cover some or all the cost for an individual.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action in the previous five-year review report? No

While the AMB indicated in a 5YRR approved by the Council on August 7, 2018, it thought it would potentially amend rule for de minimis clarifications, due to the rulemaking moratorium and the de minimis nature of the potential adjustment, the AMB did not submit a rule package to the Council.

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:

The AMB determined the probable benefits of the rules outweigh their costs and they impose the least burden and cost possible to achieve the goal of protecting public health and safety. A licensee is not required to perform office-based surgery using sedation. A licensee who voluntarily chooses to perform office-based surgery using sedation has determined the benefit of doing so outweighs the cost of compliance with the rules. This includes the possibility of needing to have the place where office-based surgery is performed licensed by the Department of Health Services, preparing and implementing written policies and procedures, ensuring staff is qualified and sufficiently trained, having a licensed and qualified healthcare professional other than the licensee present throughout the office-based surgery, having necessary equipment, space, and drugs, obtaining informed consent from patients, and complying with all applicable laws.

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

There is no corresponding federal law.

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

All of the rules were made before July 29, 2010.

14. Proposed course of action:

The AMB intends to amend the rules consistent with this review and will submit the amended rules to the Council by December 2023.

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August 9, 2021

Patricia McSorley
Executive Director
Arizona Medical Board
1740 W Adams, Ste 4000
Phoenix, AZ 85007
Via email: patricia.mcsorley@azmd.gov

Ms. McSorley,

On behalf of the Arizona Society of Anesthesiologists and our over 1000 members I appreciate your request for comments on the rules contained in Article 7 on office-based surgery using sedation. We have reviewed the rules and find that they in large part are reflective of current American Society of Anesthesiologists (ASA) guidance in the forms of relevant guidelines, standards, and statements.

One section we have noted however we have comments on and a suggestion for modification:

R4-16-704 2. b. This section of rule referencing ventilatory function monitoring in the circumstance of moderate or deep sedation should be changed to reflect the current ASA standards for basic anesthetic monitoring (attached) which states that "During moderate or deep sedation the adequacy of ventilation shall be evaluated by continual observation of qualitative clinical signs and monitoring for the presence of exhaled carbon dioxide unless precluded or invalidated by the nature of the patient, procedure or equipment." This is a change from the current text which allows for monitoring of ventilatory function via direct observation or auscultation in the case of moderate or deep sedation. We feel that, in particular for the case of deep sedation where spontaneous ventilation may be inadequate (as per the definition of this level of sedation, also attached), this modification is a change that would promote patient safety in the office-based surgery setting.

We, as a society and specialty, remain committed to the safety of Arizonans undergoing anesthetic care in all settings. Paramount to that effort is that the rules continue to require that those providing this care have the "sufficient education, training and experience to perform duties assigned" (R4-16-702. 2. b.) and "performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes" (R4-16-702. 2. c.). We feel that the Arizona Medical Board is well suited to ensure that this standard is maintained, including protecting patients whereby unqualified individuals attempt to practice medicine in the office-based setting without a full license to do so.

The Arizona Society of Anesthesiologists remains available to you in the review of these rules and will gladly provide any further feedback on any proposed changes that may come from other entities that are also engaged in this review. We would respectfully request that we are asked to do so in the event other changes are entertained so that we may partner with the board in the mutual goal of patient safety.

Best,

William C. Thompson, MD FASA
President
Arizona Society of Anesthesiologists

American Society of Anesthesiologists®

Standards for Basic Anesthetic Monitoring

Committee of Origin: Standards and Practice Parameters

(Approved by the ASA House of Delegates on October 21, 1986, last amended on October 20, 2010, and reaffirmed on December 13, 2020)

These standards apply to all anesthesia care although, in emergency circumstances, appropriate life support measures take precedence. These standards may be exceeded at any time based on the judgment of the responsible anesthesiologist. They are intended to encourage quality patient care, but observing them cannot guarantee any specific patient outcome. They are subject to revision from time to time, as warranted by the evolution of technology and practice. They apply to all general anesthetics, regional anesthetics and monitored anesthesia care. This set of standards addresses only the issue of basic anesthetic monitoring, which is one component of anesthesia care. In certain rare or unusual circumstances, 1) some of these methods of monitoring may be clinically impractical, and 2) appropriate use of the described monitoring methods may fail to detect untoward clinical developments. Brief interruptions of continual† monitoring may be unavoidable. These standards are not intended for application to the care of the obstetrical patient in labor or in the conduct of pain management.

1. STANDARD I

Qualified anesthesia personnel shall be present in the room throughout the conduct of all general anesthetics, regional anesthetics and monitored anesthesia care.

1.1 Objective –

Because of the rapid changes in patient status during anesthesia, qualified anesthesia personnel shall be continuously present to monitor the patient and provide anesthesia care. In the event there is a direct known hazard, e.g., radiation, to the anesthesia personnel which might require intermittent remote observation of the patient, some provision for monitoring the patient must be made. In the event that an emergency requires the temporary absence of the person primarily responsible for the anesthetic, the best judgment of the anesthesiologist will be exercised in comparing the emergency with the anesthetized patient's condition and in the selection of the person left responsible for the anesthetic during the temporary absence.

2. STANDARD II

During all anesthetics, the patient's oxygenation, ventilation, circulation and temperature shall be continually evaluated.

2.1 Oxygenation –

2.1.1 Objective –

To ensure adequate oxygen concentration in the inspired gas and the blood during all anesthetics.

2.1.2 Methods –

Inspired gas: During every administration of general anesthesia using an anesthesia machine, the concentration of oxygen in the patient breathing system shall be measured by an oxygen analyzer with a low oxygen concentration limit alarm in use.*

Blood oxygenation: During all anesthetics, a quantitative method of assessing oxygenation such as pulse oximetry shall be employed.* When the pulse oximeter is utilized, the variable pitch pulse tone and the low threshold alarm shall be audible to the anesthesiologist or the anesthesia care team personnel.* Adequate illumination and exposure of the patient are necessary to assess color.*

2.2 Ventilation -

2.2.1 Objective –

To ensure adequate ventilation of the patient during all anesthetics.

2.2.2 Methods –

Every patient receiving general anesthesia shall have the adequacy of ventilation continually evaluated. Qualitative clinical signs such as chest excursion, observation of the reservoir breathing bag and auscultation of breath sounds are useful. Continual monitoring for the presence of expired carbon dioxide shall be performed unless invalidated by the nature of the patient, procedure or equipment. Quantitative monitoring of the volume of expired gas is strongly encouraged.*

When an endotracheal tube or laryngeal mask is inserted, its correct positioning must be verified by clinical assessment and by identification of carbon dioxide in the expired gas. Continual end-tidal carbon dioxide analysis, in use from the time of endotracheal tube/laryngeal mask placement, until extubation/removal or initiating transfer to a postoperative care location, shall be performed using a quantitative method such as capnography, capnometry or mass spectroscopy.* When capnography or capnometry is utilized, the end tidal CO2 alarm shall be audible to the anesthesiologist or the anesthesia care team personnel.*

When ventilation is controlled by a mechanical ventilator, there shall be in continuous use a device that is capable of detecting disconnection of components of the breathing system. The device must give an audible signal when its alarm threshold is exceeded.

During regional anesthesia (with no sedation) or local anesthesia (with no sedation), the adequacy of ventilation shall be evaluated by continual observation of qualitative clinical signs. During moderate or deep sedation the adequacy of ventilation shall be evaluated by continual observation of qualitative clinical signs and monitoring for the presence of exhaled carbon dioxide unless precluded or invalidated by the nature of the patient, procedure, or equipment.

2.3 Circulation -

2.3.1 Objective –

To ensure the adequacy of the patient's circulatory function during all anesthetics.

2.3.2 Methods –

Every patient receiving anesthesia shall have the electrocardiogram continuously displayed from the beginning of anesthesia until preparing to leave the anesthetizing location.*

Every patient receiving anesthesia shall have arterial blood pressure and heart rate determined and evaluated at least every five minutes.*

Every patient receiving general anesthesia shall have, in addition to the above, circulatory function continually evaluated by at least one of the following: palpation of a pulse, auscultation of heart sounds, monitoring of a tracing of intra-arterial pressure, ultrasound peripheral pulse monitoring, or pulse plethysmography or oximetry.

2.4 Body Temperature

2.4.1 Objective –

To aid in the maintenance of appropriate body temperature during all anesthetics.

2.4.2 Methods –

Every patient receiving anesthesia shall have temperature monitored when clinically significant changes in body temperature are intended, anticipated or suspected.

† Note that "continual" is defined as "repeated regularly and frequently in steady rapid succession" whereas "continuous" means "prolonged without any interruption at any time."

* Under extenuating circumstances, the responsible anesthesiologist may waive the requirements marked with an asterisk (*); it is recommended that when this is done, it should be so stated (including the reasons) in a note in the patient's medical record.

American Society of Anesthesiologists™

Continuum of Depth of Sedation:
Definition of General Anesthesia and Levels of Sedation/Analgesia*

Committee of Origin: Quality Management and Departmental Administration

(Approved by the ASA House of Delegates on October 13, 1999, and last amended on October 23, 2019)

	Minimal Sedation Anxiolysis	*Moderate Sedation/ Analgesia ("Conscious Sedation")*	*Deep Sedation/ Analgesia*	*General Anesthesia*
Responsiveness	Normal response to verbal stimulation	Purposeful** response to verbal or tactile stimulation	Purposeful** response following repeated or painful stimulation	Unarousable even with painful stimulus
Airway	Unaffected	No intervention required	Intervention may be required	Intervention often required
Spontaneous Ventilation	Unaffected	Adequate	May be inadequate	Frequently inadequate
Cardiovascular Function	Unaffected	Usually maintained	Usually maintained	May be impaired

Minimal Sedation (Anxiolysis) is a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilatory and cardiovascular functions are unaffected.

Moderate Sedation/Analgesia ("Conscious Sedation") is a drug-induced depression of consciousness during which patients respond purposefully** to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

* Monitored Anesthesia Care ("MAC") does not describe the continuum of depth of sedation, rather it describes "a specific anesthesia service performed by a qualified anesthesia provider, for a diagnostic or therapeutic procedure." Indications for monitored anesthesia care include

"the need for deeper levels of analgesia and sedation than can be provided by moderate sedation (including potential conversion to a general or regional anesthetic."[1]

** Reflex withdrawal from a painful stimulus is NOT considered a purposeful response.

Deep Sedation/Analgesia is a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully** following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

General Anesthesia is a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

Because sedation is a continuum, it is not always possible to predict how an individual patient will respond. Hence, practitioners intending to produce a given level of sedation should be able to rescue*** patients whose level of sedation becomes deeper than initially intended. Individuals administering Moderate Sedation/Analgesia ("Conscious Sedation") should be able to rescue*** patients who enter a state of Deep Sedation/Analgesia, while those administering Deep Sedation/Analgesia should be able to rescue*** patients who enter a state of General Anesthesia.

** Reflex withdrawal from a painful stimulus is NOT considered a purposeful response.

*** Rescue of a patient from a deeper level of sedation than intended is an intervention by a practitioner proficient in airway management and advanced life support. The qualified practitioner corrects adverse physiologic consequences of the deeper-than-intended level of sedation (such as hypoventilation, hypoxia and hypotension) and returns the patient to the originally intended level of sedation. It is not appropriate to continue the procedure at an unintended level of sedation.

[1] American Society of Anesthesiologists, *Position on Monitored Anesthesia Care*, Last Amended on October 17, 2018.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

ARIZONA MEDICAL BOARD

1. An identification of the rulemaking

The Board is making rules to provide standards for office-based surgery using sedation that is conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed outpatient surgical center.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

The Board, a licensed physician who performs office-based surgery, a health care professional, staff member, and a patient are affected by the rules.

3. Cost/Benefit Analysis

Annual cost/revenue changes are designated as minimal when less than $1,000, moderate when between $1,000 and $10,000, and substantial when greater than $10,000.

a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rules.

The Board will experience moderate costs to write the rules and economic, small business, and consumer impact statement. Costs should be minimal to mail the rules, including postage, envelopes, and paper, to interested persons and physicians after the rules become effective.

The costs for the Board to implement the rules include costs for enforcement actions and may range from minimal to substantial, depending on the type and severity of each enforcement action.

b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rules.

None

c. The probable costs and benefits to businesses directly affected by the rules, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rules.

A physician who owns the office in which office-based surgery using sedation is being performed is a business that will be affected by the rules as explained in probable costs and benefits to individuals in paragraph (d).

d. Probable costs and benefits to individuals

Licensed physicians who perform office-based surgery using sedation, health care professionals, staff members, and patients are affected by the rules.

Legislation was passed in 2004 to regulate the performance of physicians who perform office-based surgery using intravenous sedation. A.R.S. § 32-1401(27)(tt) provides that performing office-based surgery using intravenous sedation in violation of Board rules is an act of unprofessional conduct. The legislature determined that patient safety is the key issue in the performance of office-based surgery. In 2006, the legislature amended A.R.S. § 32-1401(27(tt) by deleting the word intravenous so that the statute currently states that performing office-based surgery using sedation in violation of Board rules is an act of unprofessional conduct. The Board is writing the rules to protect patient safety and provide the means to implement A.R.S. § 32-1401(27)(tt).

The Board currently licenses 19,042 physicians. Because licensees are not required to report specialty areas of practice, the Board is uncertain how many physicians will be affected by the rules. It is within every physician's scope of practice to perform office-based surgery using sedation. The Board believes that most licensed physicians who are currently performing office-based surgery using sedation follow the provisions stated in the rules. These physicians should experience minimal increases in costs because of the rules. Those physicians that are not currently following the rules' provisions could experience minimal to substantial increases in costs, depending on the rule(s) not being followed. For instance, if a physician is using a staff member that does not meet the requirements in the rules, the physician would have to train the staff member or hire additional or different staff members. The rules provide definitions of different types of anesthesia that are provided to patients during surgery and

clarify that if a physician is using general anesthesia when performing office-based surgery in the physician office, the physician is required to obtain a health care license as required by A.R.S. § 36-402. The physician would then come under the jurisdiction of the Arizona Department of Health Services, which may increase the costs to the physician. However, the requirement is due to the statute, not the Board's rules. All of the definitions in the rules provide a benefit to a physician, health care professional, staff member, and patient because the definitions make the rules easier to read and understand.

Although the Board believes that all physicians have written policies and procedures for patient's rights, informed consent, care of patients in an emergency, and transfer of patients, if a physician has not established the policies in writing, the physician may experience minimal costs to establish written policies and procedures.

A physician who does not have the emergency drugs, equipment, and space required by the rules could experience minimal to moderate costs for obtaining the emergency drugs and equipment and ensuring that space requirements are met.

The Board believes that most physicians performing office-based surgery using sedation meet R4-16-704's requirement that a qualified health care professional other than the physician be present throughout the office-based surgery. The rule could cause substantial costs to a physician who does not meet the requirement. A health care professional is defined as a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician' assistant defined in A.R.S. § 32-2501 and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician's office. The physician would be required to pay the salary of such a person. The Board believes that in order to protect the health and safety of a patient the rule is necessary to meet the legislature's intent when the statute was enacted. Because the rules require a health care professional to be at

the physician's office when office-based surgery is being performed, the health care professional benefits from employment by the physician.

The Board will enforce R4-16-702(B) on a complaint basis. A building in which office-based surgery using sedation is performed is already required to meet the requirements. Thus, the standards should not increase costs to the physician for compliance.

Cost/benefit summary

The rules affect the Board, a licensed physician who performs office-based surgery, a health care professional, staff member, and a patient. The Board should experience minimal to substantial costs to write and implement the rules. The Board believes that most licensed physicians who are currently performing office-based surgery using sedation follow the provisions stated in the rules. These physicians should experience minimal increases in costs because of the rules. Those physicians that are not currently following the rules' provisions could experience minimal to substantial increases in costs, depending on the rule(s) not being followed. By providing clear and understandable rules the rules protect the physicians, staff members, health care professionals and patients. The rules offer recourse to a patient who believes their physician who performed office-based surgery has committed an act of unprofessional conduct because the physician violated the statutes or rules governing office-based surgery.

4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

None

5. A statement of the probable impact of the rules on small businesses.

a. Identification of the small businesses subject to the rules.

Most, if not all physicians who perform office-based surgery using sedation qualify as a small business as defined in A.R.S. § 41-1001(19). A physician will be affected by the rules as explained in probable costs and benefits to individuals in paragraph (d).

b. The administrative and other costs required for compliance with the rules.

None

c. A description of the methods that the agency may use to reduce the impact on small businesses.

A.R.S. § 32-1401(tt) requires that rules be written in order for the Board to regulate office-based surgery. The Board believes the rules protect the health and safety of consumers who use physicians who perform office-based surgery using sedation. The legislature determined that patient safety is the key issue in the performance of office-based surgery.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules.

The rules benefit patients who can be assured that they are receiving safe office-based surgery. If violations of the rules occur, a patient has recourse through R4-16-603, which provides that a person who performs office-based surgery using sedation in violation of Board rules commits an act of unprofessional conduct and may be sanctioned according to the rule.

6. Probable effect on state revenues

None

7. Less intrusive or less costly alternative methods of achieving the rulemaking

The methods selected are the least costly and least intrusive methods available to protect the health and safety of patients. While the overall costs of the rulemaking are expected to be minimal to substantial for the Board, the Board believes that most, if not all physicians who perform office-based surgery using sedation meet the standards in the rules. If a physician does not meet the standards, the costs may be and minimal to substantial for the physician to meet the standards. Because patient safety is paramount, there are no less intrusive or less costly alternatives to the rulemaking.

ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION

R4-16-701. Health Care Institution License

A physician who uses general anesthesia in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center when performing office-based surgery using sedation shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-702. Administrative Provisions

A. A physician who performs office-based surgery using sedation in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center shall:

1. Establish, document, and implement written policies and procedures that cover:
   a. Patient's rights,
   b. Informed consent,
   c. Care of patients in an emergency, and
   d. The transfer of patients;
2. Ensure that a staff member who assists with or a healthcare professional who participates in office-based surgery using sedation:
   a. Has sufficient education, training, and experience to perform duties assigned;
   b. If applicable, has a current license or certification to perform duties assigned; and
   c. Performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes;
3. Ensure that the office where the office-based surgery using sedation is performed has all equipment necessary:
   a. For the physician to safely perform the office-based surgery using sedation,
   b. For the physician or health care professional to safely administer the sedation,
   c. For the physician or health care professional to monitor the use of sedation, and
   d. For the physician and health care professional administering the sedation to rescue a patient after the sedation is administered to the patient and the patient enters into a deeper state of sedation than what was intended by the physician.
4. Ensure that a copy of the patient's rights policy is provided to each patient before performing office-based surgery using sedation;
5. Obtain informed consent from the patient before performing an office-based surgery using sedation that:
   a. Authorizes the office-based surgery, and
   b. Authorizes the office-based surgery to be performed in the physician's office; and
6. Review all policies and procedures every 12 months and update as needed.

B. A physician who performs office-based surgery using sedation shall comply with:

1. The local jurisdiction's fire code;
2. The local jurisdiction's building codes for construction and occupancy;
3. The biohazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
4. The controlled drug administration, supply, and storage standards in 4 A.A.C. 23.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-703. Procedure and Patient Selection

A. A physician shall ensure that each office-based surgery using sedation performed:

1. Can be safely performed with the equipment, staff members, and health care professionals at the physician's office;
2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
3. Is within the education, training, experience skills, and licensure of the physician; and
4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.

B. A physician shall not perform office-based surgery using sedation if the patient:

1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
2. Will require inpatient services at a hospital.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-704. Sedation Monitoring Standards

A physician who performs office-based surgery using sedation shall ensure from the time sedation is administered until post-sedation monitoring begins:

1. A quantitative method of assessing a patient's oxygenation, such as pulse oximetry, is used when minimal sedation is administered to the patient, and
2. When moderate or deep sedation is administered to a patient:
   a. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
   b. The patient's ventilatory function is monitored by any of the following:
      i. Direct observation,
      ii. Auscultation, or
      iii. Capnography;
   c. The patient's circulatory function is monitored during the surgery by:
      i. Having a continuously displayed electrocardiogram,
      ii. Documenting arterial blood pressure and heart rate at least every five minutes, and
      iii. Evaluating the patient's cardiovascular function by pulse plethysmography,
   d. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
   e. That a licensed and qualified healthcare professional, other than the physician performing the office-based surgery, whose sole responsibility is attending to the patient, is present throughout the office-based surgery.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-705. Perioperative Period; Patient Discharge

A physician performing office-based surgery using sedation shall ensure all of the following:

1. During office-based surgery using sedation, the physician is physically present in the room where office-based surgery is performed;
2. After the office-based surgery using sedation is performed, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient's post-sedation monitoring is discontinued;
3. If using minimal sedation, the physician or a health care professional certified in ACLS, PALS, or BLS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
4. If using deep or moderate sedation, the physician or a health care professional certified in ACLS or PALS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
5. A discharge is documented in the patient's medical record including:
   a. The time and date of the patient's discharge, and
   b. A description of the patient's medical condition at the time of discharge; and
6. A patient receives discharge instructions and documents in the patient's medical record that the patient received the discharge instructions.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-706. Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation

A. In addition to the requirements in R4-16-702(A)(3) and R4-16-703(A)(1), a physician who performs office-based surgery using sedation shall ensure that the physician's office has at a minimum:

1. The following:
   a. A reliable oxygen source with a SaO_2 monitor;
   b. Suction;
   c. Resuscitation equipment, including a defibrillator;
   d. Emergency drugs; and
   e. A cardiac monitor;

2. The equipment for patient monitoring according to the standards in R4-16-704;
3. Space large enough to:
   a. Allow for access to the patient during office-based surgery using sedation, recovery, and any emergency;
   b. Accommodate all equipment necessary to perform the office-based surgery using sedation; and
   c. Accommodate all equipment necessary for sedation monitoring;
4. A source of auxiliary electrical power available in the event of a power failure; and
5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery using sedation is performed on these patients; and
6. Procedures to minimize the spread of infection.

B. A physician who performs office-based surgery using sedation shall:
1. Ensure that all equipment used for office-based surgery using sedation is maintained, tested, and inspected according to manufacturer specifications, and
2. Maintain documentation of manufacturer-recommended maintenance of all equipment used in office-based surgery using sedation.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

R4-16-707. Emergency and Transfer Provisions

A. A physician who performs office-based surgery using sedation shall ensure that before a health care professional participates in or staff member assists with office-based surgery using sedation, the health care professional and staff member receive instruction in the following:
1. Policy and procedure in cases of emergency,
2. Policy and procedure for office evacuation, and
3. Safe and timely patient transfer.

B. When performing office-based surgery using sedation, a physician shall not use any drug or agent that trigger malignant hyperthermia.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

32-1401. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a valid and existing license to practice medicine.

2. "Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a licensee that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved hospital internship, residency or clinical fellowship program" means a program at a hospital that at the time the training occurred was legally incorporated and that had a program that was approved for internship, fellowship or residency training by the accreditation council for graduate medical education, the association of American medical colleges, the royal college of physicians and surgeons of Canada or any similar body in the United States or Canada approved by the board whose function is that of approving hospitals for internship, fellowship or residency training.

5. "Approved school of medicine" means any school or college offering a course of study that, on successful completion, results in the degree of doctor of medicine and whose course of study has been approved or accredited by an educational or professional association, recognized by the board, including the association of American medical colleges, the association of Canadian medical colleges or the American medical association.

6. "Board" means the Arizona medical board.

7. "Completed application" means that the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

8. "Direct supervision" means that a physician, physician assistant licensed pursuant to chapter 25 of this title or nurse practitioner certified pursuant to chapter 15 of this title is within the same room or office suite as the medical assistant in order to be available for consultation regarding those tasks the medical assistant performs pursuant to section 32-1456.

9. "Dispense" means the delivery by a doctor of medicine of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

10. "Doctor of medicine" means a natural person holding a license, registration or permit to practice medicine pursuant to this chapter.

11. "Full-time faculty member" means a physician who is employed full time as a faculty member while holding the academic position of assistant professor or a higher position at an approved school of medicine.

12. "Health care institution" means any facility as defined in section 36-401, any person authorized to transact disability insurance, as defined in title 20, chapter 6, article 4 or 5, any person who is issued a certificate of authority pursuant to title 20, chapter 4, article 9 or any other partnership, association or corporation that provides health care to consumers.

13. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the doctor and the natural or adopted children, father, mother, brothers and sisters of the doctor's spouse.

14. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician that the physician's conduct violates state or federal law and may require the board to monitor the physician.

15. "Limit" means taking a nondisciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be mentally or physically unable to safely engage in the practice of medicine.

16. "Medical assistant" means an unlicensed person who meets the requirements of section 32-1456, has completed an education program approved by the board, assists in a medical practice under the supervision of a doctor of medicine, physician assistant or nurse practitioner and performs delegated procedures commensurate with the assistant's education and training but does not diagnose, interpret, design or modify established treatment programs or perform any functions that would violate any statute applicable to the practice of medicine.

17. "Medically incompetent" means a person who the board determines is incompetent based on a variety of factors, including:

(a) A lack of sufficient medical knowledge or skills, or both, to a degree likely to endanger the health of patients.

(b) When considered with other indications of medical incompetence, failing to obtain a scaled score of at least seventy-five percent on the written special purpose licensing examination.

18. "Medical peer review" means:

(a) The participation by a doctor of medicine in the review and evaluation of the medical management of a patient and the use of resources for patient care.

(b) Activities relating to a health care institution's decision to grant or continue privileges to practice at that institution.

19. "Medicine" means allopathic medicine as practiced by the recipient of a degree of doctor of medicine.

20. "Office based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center.

21. "Physician" means a doctor of medicine who is licensed pursuant to this chapter.

22. "Practice of medicine" means the diagnosis, the treatment or the correction of or the attempt or the claim to be able to diagnose, treat or correct any and all human diseases, injuries, ailments, infirmities or

deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities, except as the same may be among the acts or persons not affected by this chapter. The practice of medicine includes the practice of medicine alone or the practice of surgery alone, or both.

23. "Restrict" means taking a disciplinary action that alters the physician's practice or professional activities if the board determines that there is evidence that the physician is or may be medically incompetent or guilty of unprofessional conduct.

24. "Special purpose licensing examination" means an examination that is developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice for a considerable period of time in another jurisdiction and to determine the competence of a physician who is under investigation by a state licensing board.

25. "Teaching hospital's accredited graduate medical education program" means that the hospital is incorporated and has an internship, fellowship or residency training program that is accredited by the accreditation council for graduate medical education, the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada or a similar body in the United States or Canada that is approved by the board and whose function is that of approving hospitals for internship, fellowship or residency training.

26. "Teaching license" means a valid license to practice medicine as a full-time faculty member of an approved school of medicine or a teaching hospital's accredited graduate medical education program.

27. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Violating any federal or state laws, rules or regulations applicable to the practice of medicine.

(b) Intentionally disclosing a professional secret or intentionally disclosing a privileged communication except as either act may otherwise be required by law.

(c) Committing false, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer or representative.

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(e) Failing or refusing to maintain adequate records on a patient.

(f) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.

(g) Using controlled substances except if prescribed by another physician for use during a prescribed course of treatment.

(h) Prescribing or dispensing controlled substances to members of the physician's immediate family.

(i) Prescribing, dispensing or administering schedule II controlled substances as prescribed by section 36-2513 or the rules adopted pursuant to section 36-2513, including amphetamines and similar schedule II sympathomimetic drugs in the treatment of exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.

(j) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(k) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-1491.

(l) Signing a blank, undated or predated prescription form.

(m) Committing conduct that the board determines is gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(n) Representing that a manifestly incurable disease or infirmity can be permanently cured, or that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(o) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in the treatment of a disease, injury, ailment or infirmity.

(p) Having action taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.

(q) Having sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.

(r) Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

(s) Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.

(t) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter.

(u) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.

(v) Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect. This subdivision does not apply to payments from a medical researcher to a physician in connection with identifying and monitoring patients for a clinical trial regulated by the United States food and drug administration.

(w) Obtaining a fee by fraud, deceit or misrepresentation.

(x) Charging or collecting a clearly excessive fee. In determining whether a fee is clearly excessive, the board shall consider the fee or range of fees customarily charged in this state for similar services in light of modifying factors such as the time required, the complexity of the service and the skill requisite to

perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the provision of the service.

(y) Committing conduct that is in violation of section 36-2302.

(z) Using experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the United States food and drug administration or its successor agency.

(aa) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(bb) Procuring or attempting to procure a license to practice medicine or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

(cc) Representing or claiming to be a medical specialist if this is not true.

(dd) Maintaining a professional connection with or lending one's name to enhance or continue the activities of an illegal practitioner of medicine.

(ee) Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board.

(ff) Failing to allow properly authorized board personnel on demand to examine and have access to documents, reports and records maintained by the physician that relate to the physician's medical practice or medically related activities.

(gg) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the doctor has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed if the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one doctor of medicine to another doctor of medicine within a group of doctors of medicine practicing together.

(hh) Using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy, with the exception of treatment of heavy metal poisoning, without:

(i) Adequate informed patient consent.

(ii) Conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee.

(iii) Approval by the United States food and drug administration or its successor agency.

(ii) Prescribing, dispensing or administering anabolic-androgenic steroids to a person for other than therapeutic purposes.

(jj) Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

(kk) Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.

(ll) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

(mm) Committing conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

(nn) Making a representation by a doctor of medicine or the doctor's staff, employer or representative that the doctor is boarded or board certified if this is not true or the standing is not current or without supplying the full name of the specific agency, organization or entity granting this standing.

(oo) Refusing to submit to a body fluid examination or any other examination known to detect the presence of alcohol or other drugs as required by the board pursuant to section 32-1452 or pursuant to a board investigation into a doctor of medicine's alleged substance abuse.

(pp) Failing to report in writing to the Arizona medical board or the Arizona regulatory board of physician assistants any evidence that a doctor of medicine or a physician assistant is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely practice medicine or to perform as a physician assistant.

(qq) As a physician who is the chief executive officer, the medical director or the medical chief of staff of a health care institution, failing to report in writing to the board that the hospital privileges of a doctor of medicine have been denied, revoked, suspended, supervised or limited because of actions by the doctor that appear to show that the doctor is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be unable to engage safely in the practice of medicine.

(rr) Claiming to be a current member of the board or its staff or a board medical consultant if this is not true.

(ss) Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, osteopathic physician or homeopathic physician licensed under chapter 7, 8, 14, 17 or 29 of this title on receipt of proper authorization to do so from the patient, a minor patient's parent, the patient's legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(tt) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical or mental health status examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted through telehealth as defined in section 36-3601 with a clinical evaluation that is appropriate for the patient and the condition with which the patient presents, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1. This subdivision does not apply to:

(i) A physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, public health emergency, infectious disease outbreak or act of bioterrorism. For the purposes of this item, "bioterrorism" has the same meaning prescribed in section 36-781.

(v) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician.

(vi) Prescriptions written or prescription medications issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(vii) Prescriptions for epinephrine auto-injectors written or dispensed for a school district or charter school to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

(viii) Prescriptions written by a licensee through a telehealth program that is covered by the policies and procedures adopted by the administrator of a hospital or outpatient treatment center.

(ix) Prescriptions for naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration that are written or dispensed for use pursuant to section 36-2228 or 36-2266.

(uu) Performing office based surgery using sedation in violation of board rules.

(vv) Practicing medicine under a false or assumed name in this state.

32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.

2. Initiating investigations and determining on its own motion whether a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.

3. Developing and recommending standards governing the profession.

4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination whether the applicant meets the requirements for licensure pursuant to this chapter.

5. Disciplining and rehabilitating physicians.

6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.

7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.

8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.

9. Establishing fees and penalties as provided pursuant to section 32-1436.

10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

11. Determining whether a prospective or current Arizona licensed physician has the training or experience to demonstrate the physician's ability to treat and manage opiate-dependent patients as a qualifying physician pursuant to 21 United States Code section 823(g)(2)(G)(ii).

B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.

E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.

F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.

G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for appointing the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each

other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.

H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

32-1404. Meetings; quorum; committees; rules; posting

A. The board shall hold regular quarterly meetings on a date and at the time and place designated by the chairman. The board shall hold special meetings, including meetings using communications equipment that allows all members participating in the meeting to hear each other, as the chairman determines are necessary to carry out the functions of the board. The board shall hold special meetings on any day that the chairman determines are necessary to carry out the functions of the board. The vice-chairman may call meetings and special meetings if the chairman is not available.

B. The presence of seven board members at a meeting constitutes a quorum. A majority vote of the quorum is necessary for the board to take any action.

C. The chairman may establish committees from the membership of the board and define committee duties necessary to carry out the functions of the board.

D. The board may adopt rules pursuant to title 41, chapter 6 that are necessary and proper to carry out the purposes of this chapter.

E. Meetings held pursuant to subsection A of this section shall be audio and video recorded. Beginning September 2, 2014, the board shall post the video recording on the board's website within five business days after the meeting.

ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL
Title 3, Chapter 9, Articles 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: **March 15, 2023**

SUBJECT: **Arizona Grain Research & Promotion Council**
Title 3, Chapter 9, Article 2

This Five-Year-Review Report (5YRR) from the Arizona Grain Research and Promotion Council relates to rules in Title 3, Chapter 9, Article 2 regarding the Council.

The Council did not propose any changes to the rules in the last 5YRR of these rules.

Proposed Action

The Council indicates the rules are overall clear, concise, understandable, effective, and consistent with other rules and statutes and therefore is not proposing any changes to the rules.

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

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

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

According to the Grain Research Council, the economic impact has not differed significantly from what was projected in the last economic impact statements prepared.

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?

According to the Grain Research Council, these rules impose the least burden and costs to persons regulated by the rules 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 Council indicates they did not receive any written criticisms to the rules.

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

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

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

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

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

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

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

Yes, the Council 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 Council indicates the rules are not more stringent than 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 Council is not proposing any changes to the rules.

Council staff recommends approval of this report.

KATIE HOBBS
Governor

DAVID SHARP
Chairman

Arizona Grain Research & Promotion Council

1110 W. Washington Street, Suite 450, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

January 25, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Grain Research and Promotion Council, A.A.C. Title 3, Chapter 9, Article 2, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Grain Research and Promotion Council for A.A.C. Title 3, Chapter 9, Article 2 which is due on January 31, 2023.

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

For questions about this report, please contact Lisa James at (602) 542-3262 or ljames@azda.gov.

Sincerely,

David L Sharp

David Sharp,
Chairman

Enclosures: Five-Year Review Report
Current Rules

ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

5 YEAR REVIEW REPORT

A.A.C. TITLE 3, CHAPTER 9,

ARTICLE 2

JANUARY 24, 2023

1. Authorization of the rule by existing statutes

All of the rules are authorized by A.R.S. § 3-584(C)(1).

2. The objective of each rule:

Rule	Objective
R3-9-201.	Definitions This rule is necessary to set forth the definition of particular terms used within Chapter 9, Article 2.
R3-9-202.	Fees; Grain Assessment and Refund This rule is necessary to establish the processes for prescribing the assessment fee, remitting the assessment fee and requesting a refund of the assessment fee.
R3-9-203.	Hearings This rule is necessary to establish the process for a party to dispute an assessment and penalty imposed by the Council and the process the Council will use to review and rectify the dispute.
R3-9-204.	Records This rule is necessary to set forth the location and accessibility of Council records.
R3-9-205.	Grants This rule is necessary to establish the process for the solicitation of grant applications, the criteria used for considering grant applications and the process used for awarding grant funds to successful applicants.

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 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:

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

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?

No. There were no changes proposed.

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 Council believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

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

These rules are not more stringent than a 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:

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 Council does not propose any further action at this time.

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE - AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

R3-9-201. Definitions

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

"AGRPC" means the Arizona Grain Research and Promotion Council.

"Department" means the Arizona Department of Agriculture.

Historical Note

Adopted effective August 28, 1986 (Supp. 86-4). Section R3-9-201 renumbered from R3-13-201 (Supp. 91-4). Amended effective December 22, 1993 (Supp. 93-4). Former Section R3-9-201 renumbered to R3-9-202; new Section R3-9-201 made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-202. Fees; Grain Assessment and Refund

A. The AGRPC shall annually prescribe the fee to be assessed per hundredweight of grain sold in Arizona within the limitations established under A.R.S. § 3-587.

B. The person who pays the fee required under subsection (A) shall ensure that:
1. The grain assessment fee is remitted to the AGRPC; and
2. The following information is provided to the AGRPC on a form obtained from the Department:
   a. First buyer's name, address, and telephone number;
   b. Report date and months covered by the report;
   c. Total amount remitted to the AGRPC for the reporting period;
   d. Producer's name, address, and telephone number;
   e. Type of grain and tonnage by grain type; and
   f. First buyer's or designee's signature.

C. Refund.
1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the AGRPC on a form obtained from the Department:
   a. Producer's name, address, telephone number, and signature;
   b. Name of the first buyer;
   c. Amount of grain sold subject to the refund request; and
   d. First buyer's or designee's notarized signature confirming the purchase, funds withheld, and date remitted to the AGRPC.
2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

Historical Note

Section R3-9-202 renumbered from R3-9-201 and amended by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-203. Hearings

A. The AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AGRPC required under A.R.S. § 3-591.

B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.

C. The AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party's rights:
1. The decision is not justified by the evidence or is contrary to law;
2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
3. One or more of the following deprived the party of a fair hearing:
   a. Irregularity or abuse of discretion in the conduct of the proceeding;
   b. Misconduct of the AGRPC, the administrative law judge, or the prevailing party; or
   c. Accident or surprise which could not have been prevented by ordinary prudence; or
4. Excessive or insufficient sanction.

D. The AGRPC 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 (C). 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

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14

Department of Agriculture – Agricultural Councils and Commissions
A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-204. Records

The Department shall retain the AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-205. Grants

A. Definitions.

"Authorized signature" means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.

"Awardee" means an applicant to whom the AGRPC awards grant funds for a proposed project.

"Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

"Grant" means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).

"Grant award agreement" means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

B. Grant application process.

1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.
3. The AGRPC shall ensure that the grant application and manual contain the following items:
   a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
   b. A statement that the information contained in a grant application is not confidential;
   c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
   d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
   e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
   f. The criteria that the AGRPC shall use to evaluate an application;
   g. The date and time by which the applicant shall submit an application;
   h. The anticipated date of the AGRPC award;
   i. A copy of this Section consisting of grant solicitation procedures and requirements; and
   j. Any other information necessary for the grant application.
4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.

C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:

1. The applicant's successful completion of prior research projects, if applicable;
2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
3. The extent to which the proposed project addresses future issues facing the grain industry;
4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
5. The appropriateness of the budget request in achieving the project objectives;
6. The appropriateness of the proposal time-frame to the stated project objectives; and
7. Relevant experience and qualifications of the applicant.

D. Public participation.

1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

E. Evaluation of grant applications.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AGRPC may modify an applicant's proposed project in awarding funding.
3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

F. Awards and project monitoring.

1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
   a. A final research report, and
   b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.

G. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.

H. Governmental units.
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
   a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
   b. The application shall be available for public inspection upon receipt by the AGRPC.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

3-584. Powers and duties of the council

A. The council shall:

1. Meet at least once during each calendar quarter and more frequently on the call of the chairman, vice-chairman or any three members of the council.

2. Annually elect a chairman from among its members.

3. Elect a secretary and a treasurer from among its members.

4. Establish an executive committee, consisting of the chairman, secretary and treasurer. The executive committee shall act pursuant to direction received from the full council, or if the situation arises, the executive committee shall act and then bring the subject and its action before the full council at the next regular meeting of the council for review and ratification.

5. Establish fees to be assessed within the limits prescribed in section 3-587 to be held in trust in, and subject to the terms and conditions prescribed for, the Arizona grain research trust fund established by section 3-590.

B. Programs and projects authorized under this article may include:

1. Cooperation in state, regional, national or international activities with public or private organizations or individuals to assist in developing and expanding markets and reducing the cost of marketing grain and grain products.

2. Participation in research projects and programs to assist in reducing fresh water consumption, developing new grain varieties, improved production and handling methods, research and design of new or improved harvesting and handling equipment.

3. Any program or project that the council determines appropriate to provide education, publicity or other assistance to facilitate further development of the Arizona grain industry.

C. The council may:

1. Adopt administrative rules necessary to promptly and effectively administer this article.

2. Appoint subordinate officers and employees of the council, prescribe their duties and fix their compensation.

3. Accept donations of monies, property, services or other assistance from public or private sources for the purpose of furthering the objectives of this article. All donations of monies shall be held in trust in, and subject to the terms and conditions prescribed for, the Arizona grain research trust fund established by section 3-590.

4. Investigate and prosecute in the name of this state any action or suit to enforce the collection or ensure payment of the fees authorized and sue and be sued in the name of the council.

5. Make grants to research agencies for financing appropriate studies, research projects and programs to assist in reducing fresh water consumption, developing new grain varieties, improved production and handling methods and research and design of new or improved harvesting and handling equipment.

ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8, Articles 3 & 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

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

FROM: Council Staff

DATE: **March 15, 2023**

SUBJECT: **Arizona Grain Research & Promotion Council**
Title 3, Chapter 9, Article 2

This Five-Year-Review Report (5YRR) from the Arizona Grain Research and Promotion Council relates to rules in Title 3, Chapter 9, Article 2 regarding the Council.

The Council did not propose any changes to the rules in the last 5YRR of these rules.

Proposed Action

The Council indicates the rules are overall clear, concise, understandable, effective, and consistent with other rules and statutes and therefore is not proposing any changes to the rules.

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

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

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

According to the Grain Research Council, the economic impact has not differed significantly from what was projected in the last economic impact statements prepared.

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?

According to the Grain Research Council, these rules impose the least burden and costs to persons regulated by the rules 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 Council indicates they did not receive any written criticisms to the rules.

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

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

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

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

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

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

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

Yes, the Council 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 Council indicates the rules are not more stringent than 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 Council is not proposing any changes to the rules.

Council staff recommends approval of this report.

ARIZONA STATE RETIREMENT SYSTEM

MAILING ADDRESS: PO Box 33910, Phoenix, AZ 85067-3910 | DIRECTOR: Paul Matson
STREET ADDRESS: 3300 North Central Avenue, Phoenix, AZ 85012
PHONE: 602.240.2000 | TOLL FREE: 1.800.621.3778 | ONLINE: AzASRS.gov

January 20, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Ave., Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report for Articles 3 & 8

In compliance with A.R.S. § 41-1056(A), the Arizona State Retirement System (ASRS) has reviewed all of the rules in A.A.C. Title 2, Chapter 8, Articles 3 & 8 and submits the enclosed report to the Council for approval. The ASRS does not intend for any rules in these articles to expire at this time and the ASRS certifies that it is in compliance with A.R.S. § 41-1091. The ASRS contact person for this report is Jessica Thomas, Rules Writer, who may be reached at (602) 240-2039.

Sincerely,

Jeremiah Scott
Assistant Director
Arizona State Retirement System

Enclosure

Arizona State Retirement System

5 YEAR REVIEW REPORT

2 A.A.C. 8, Articles 3 & 8

January 12, 2023

1. **Authorization of the rules by existing statutes:** A.R.S. §§ 41-1021 et seq. and 38-711 et seq. and 38-797 et. Seq.
2. **The objective of each rule:**

Rule	Objective
R2-8-301. Definitions	To provide definitions used in Article 3.
R2-8-302. Application for Long-Term Disability Benefit	To clarify how a member may submit an application for LTD benefits.
R2-8-303. Long-Term Disability Calculation	To clarify how an LTD benefit is calculated.
R2-8-304. Payment of Long-Term Disability Benefit	To clarify how an LTD benefit is paid.
R2-8-305. Social Security Disability Appeal	To clarify how a member must pursue a Social Security Disability benefit.
R2-8-306. Approval of Social Security Disability	To clarify how the member must notify the ASRS of a Social Security Disability approval.
R2-8-801. Definitions	To provide definitions used in Article 8.
R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	To clarify how the Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount shall be calculated.
R2-8-803. Reimbursement of Overpayments	To clarify how the ASRS shall notify a member of an overpayment
R2-8-804. Collection of overpayments from Forfeiture	To clarify how the ASRS shall collect an overpayment from a forfeiture.
R2-8-805. Collection of overpayments from Retirement Benefit	To clarify how the ASRS shall collect an overpayment from a retirement benefit.
R2-8-806. Collection of overpayments from Survivor Benefit	To clarify how the ASRS shall collect an overpayment from a survivor benefit.
R2-8-807. Collection of overpayments from LTD Benefit	To clarify how the ASRS shall collect an overpayment from an LTD benefit.
R2-8-808. Collection of overpayments by the Attorney General	To clarify how the Attorney General may collect an overpayment on behalf of the ASRS.
R2-8-809. Collection of overpayments By the Arizona Department of Revenue	To clarify how the Arizona Department of Revenue may collect an overpayment on behalf of the ASRS.
R2-8-810. Collection of overpayments by Garnishment or Levy	To clarify how the ASRS may garnish or levy property to collect an overpayment.

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

4. **Are the rules consistent with other rules and statutes:** Yes, with the exception of the definition of "Estimated Social Security Disability Income Amount" in R2-8-301 which can be removed because that term is not used in the Article 3 rules and R2-8-304(C) which can be removed because A.R.S. § 38-797.09 has been repealed.
5. **Are the rules enforced as written:** Mostly. R2-8-804(A) is not necessary because the ASRS will not collect an overpayment from a forfeiture if the forfeiture is cancelled. R2-8-805(C) needs to be amended to reflect how the ASRS will collect an overpayment if the overpayment cannot be collected pursuant to R2-8-805(C)(1) and (C)(2).
6. **Are the rules clear, concise, and understandable:** Mostly. The rules in Article 8 should be amended to better reflect "Estimated Social Security Disability Income Amount" and "Revised Social Security Disability Income Amount" as defined terms. The definition of "Overpayment" in R2-8-801 should also be updated to better reflect statutory references requiring the ASRS to collect overpayments.
7. **Has the agency received written criticisms of the rules in the last five years:** No
8. **Economic, small business, and consumer impact comparison:** The economic impact has not differed from the impact that was anticipated in the final rulemakings at 23 A.A.R. 2746, effective November 13, 2017, 25 A.A.R. 2471, effective November 3, 2019, 27 A.A.R. 89, effective March 9, 2021, and 28 A.A.R. 1255, effective July 17, 2022 for Article 3 and 23 A.A.R. 2750, effective November 13, 2017 for Article 8.
9. **Has the agency received any business competitiveness analyses of the rules:** No
10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report:** No; all the rules in Articles 3 and 8 were adopted in 2017 and this is the first 5YRR of these rules.
11. **A determination that the probable benefits of the rule outweigh within this state the probably costs of the rule, and the rule imposes the least burden and costs to regulated persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:** The probable benefits of the rules outweigh the probable costs of the rules because the rules simply clarify statutory requirements without imposing any additional requirements. The rules impose the least burdens and costs because they simply contain the information necessary for members to understand how to obtain LTD benefits and how the ASRS may collect an overpayment.
12. **Are the rules more stringent than corresponding federal laws:** 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:** The rules do not issue a permit, license or agency authorization.
14. **Proposed Course of Action:** The ASRS anticipates making the changes identified in this report by June 2023.

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM 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

July 1, 2022 through September 30, 2022

Questions about these rules? Contact:

Board: Arizona State Retirement System
Address: 3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Website: https://www.azasrs.gov
Name: Jessica A.R. Thomas, Rules Writer
Telephone: (602) 240-2039
Email: Ruleswriter@azasrs.gov

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."*

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TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

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. § 41-5505.

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.

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."*

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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."*

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
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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-711 et seq.

Supp. 22-3

CHAPTER TABLE OF CONTENTS

ARTICLE 1. RETIREMENT SYSTEM

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)

(Supp. 17-2).

Article 2,

consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

ARTICLE 3. LONG-TERM DISABILITY

Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

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Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

ARTICLE 5. PURCHASING SERVICE CREDIT

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

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ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

ARTICLE 8. RECOVERY OF OVERPAYMENTS

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

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ARTICLE 9. COMPENSATION

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section

ARTICLE 10. MEMBERSHIP

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section

ARTICLE 11. TRANSFER OF SERVICE CREDIT

Section

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ARTICLE 1. RETIREMENT SYSTEM

R2-8-101. Repealed

Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-102. Repealed

Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-103. Repealed

Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
   a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
   b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
   c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
   a. Day of the act or event from which a designated period of time begins to run; and
   b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "DRO" means a copy of an original domestic relations order specified in A.R.S. § 38-773(H)(1) that contains all of the following:
   a. The requirements of A.R.S. § 38-773(C);
   b. The date of the member and alternate payee's marriage;
   c. The date of divorce or the date in which the community property interest ended;
   d. A court stamp indicating the domestic relations order is a true and correct copy of the original domestic relations order on file with the court;
   e. How the member's ASRS benefits should be split in specific amounts for the following possible events;
      i. The member's retirement;
      ii. Return of contributions and termination of membership according to R2-8-115; and
      iii. The death of the member prior to retirement;
   f. Whether the member may transfer all ASRS service credit to another retirement system;
   g. Whether the member is required to maintain the alternate payee as the member's beneficiary;

h. Whether the member may rescind their retirement option according to A.R.S. § 38-760; and
i. The judge's dated signature.

10. "Party" means the same as in A.R.S. § 41-1001(14).
11. "Person" means the same as in A.R.S. § 41-1001(15).
12. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
13. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
14. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
15. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
16. "United States" means the same as in A.R.S. § 1-215(39).

Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "reqired" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

R2-8-105. Repealed

Historical Note

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-106. Reserved

R2-8-107. Reserved

R2-8-108. Reserved

R2-8-109. Reserved

R2-8-110. Reserved

R2-8-111. Reserved

R2-8-112. Reserved

R2-8-113. Emergency Expired

Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-114. Emergency Expired

Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death

A. The following definitions apply to this Section unless otherwise specified:

1. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
2. "Employer Number" means a unique identifier the ASRS assigns to a member employer.

3. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
4. "LTD" Means the same as in R2-8-301.
5. "On File" means ASRS has received the information.
6. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
7. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon request to withdraw by the member, the ASRS shall provide:
1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's current mailing address, if not On File with ASRS;
4. The member's birth date, if not On File with ASRS;
5. Notarized signature of the member certifying that the member:
   a. Is no longer employed by any Employer;
   b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
   c. Is not currently in a leave of absence status with an Employer;
   d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
   e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
   f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
   g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
   h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
   i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
   j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
   k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
   l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
   m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.
6. Specify that:
   a. The entire amount of the distribution be paid directly to the member,
   b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
   c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify;
   a. The type of eligible retirement plan; and
   b. The name and mailing address of the eligible retirement plan.

E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's termination date;

4. The member's final pay period ending date;
5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
6. The Employer's name and telephone number;
7. The Employer Number;
8. The name and title of the authorized Employer representative;
9. Certification by the authorized Employer representative that:
   a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
   b. There is no agreement to re-employ the member;
   c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
   d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.

F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).

G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.

H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless ASRS has received a DRO before the ASRS returns the contributions as specified by the member.

J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.

K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

Historical Note

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

R2-8-116. Alternate Contribution Rate

A. For purposes of this Section, the following definitions apply:
1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
4. "Leased from a third party" means:
   a. The employee is not employed by an employer; and
   b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.

B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
1. The retired member is leased from a third party; and
2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.

C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.

D. The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.

E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).

F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

Historical Note

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-117. Return to Work After Retirement

A. Unless otherwise specified, in this Section:
1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
2. "Returns to work" means the member retired from the ASRS prior to Commencing Employment with an Employer.

B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member Commencing Employment with an Employer.

C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.

D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the actual hours or intent of each retired member's employment that results in:
1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.

E. The Working After Retirement form shall contain the following information:
1. The retired member's Social Security number or U.S. Tax Identification number;
2. The retired member's full name;
3. The date the member retired;
4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
5. The first date of Commencing Employment upon the retired member's return to work;
6. The intent of the retired member's employment reflected as:
   a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
   b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.

F. Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.

G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.

H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.

I. If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

J. Notwithstanding any other Section, a member who meets the required minimum distributions age according to A.R.S. § 38-775, may not elect to suspend the member's retirement benefit.

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Historical Note

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

R2-8-118. Application of Interest Rates

A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
7-1-2022	7.00%	2.00%

B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:

1. Employer and employee contributions;
2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
4. Interest credited in previous years.

C. Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

Historical Note

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an

immediate effective of March 5, 2021 (Supp. 21-1). Amended by final rulemaking at 28 A.A.R. 1481 (June 24, 2022), with an immediate effective date of June 6, 2022 (Supp. 22-2).

R2-8-119. Expired

Historical Note

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-120. Repealed

Historical Note

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice

A. Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.

B. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).

C. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

D. The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

R2-8-122. Remittance of Contributions

A. Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.

B. Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.

C. Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.

D. Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.

E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

Historical Note

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

R2-8-123. Actuarial Assumptions and Actuarial Value of Assets

A. For the purposes of this Section, "market value" means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.

B. The Board adopts the following actuarial assumptions and asset valuation method:

1. The interest and investment return rate assumptions are determined by the Board.
2. The actuarial value of assets equals the market value of assets:
   a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
   b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

Historical Note

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

Table 1. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 2. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3. Repealed

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 3A. Expired

Historical Note

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3B. Expired

Historical Note

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4A. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4B. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4C. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 5. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renum-

bered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 6. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 7. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations

A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).

B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
   a. The member's full name;
   b. The member's date of birth; and
   c. The member's current Compensation;

C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.

D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).

E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
2. The member's date of birth;
3. The member's Compensation at termination;
4. The date the member terminated employment; and

5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.

F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.

G. If the ASRS calculates an unfunded liability of less than $0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.

H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.

I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.

J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

A. The following definitions apply to this Section unless otherwise specified:

1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
   a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
   b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
3. "Compensation" means the same as in A.R.S. § 38-711(7).
4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
   a. A change in the employee's primary job responsibilities; and
   b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
   c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).

B. Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.

C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.

D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:

1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.

E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).

F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.

G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.

H. If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).

I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.

J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).

K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.

L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

M. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-126. Retirement Application

A. For the purposes of this Section, the following definitions apply, unless stated otherwise:
1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
3. "Applicable retirement date" means the later of:
   a. The date a member retires from the ASRS for the first time; or
   b. The date a member re-retires from the ASRS after returning to active membership.
4. "Conservator" means the same as in A.R.S. § 14-7651.
5. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
6. "Legal documentation" means:
   a. One document issued from a United States government entity; or
   b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
7. "LTD" means the same as in R2-8-301.
8. "Irrevocable PDA" means the same as in R2-8-501.
9. "On File" means the same as in R2-8-115.
10. "Original retirement date" means the later of:
    a. The date a member retires from the ASRS for the first time; or
    b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
12. "Spouse" means the individual to whom a member is married under Arizona law.
13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.

B. A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's marital status, if not On File with ASRS;

4. The member's current mailing address; if not On File with ASRS;
5. The member's date of birth, if not On File with ASRS;
6. A retirement date according to A.R.S. § 38-764(A);
7. The retirement option the member is electing;
8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
   a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
   b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
   a. The beneficiary's full name;
   b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
   c. The beneficiary's date of birth;
   d. The beneficiary's relationship to the member; and
   e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
10. Whether the member is electing the Optional Health Insurance Premium Benefit;
11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
   a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
   b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
   c. The member's spouse's full name; and
   d. The member's spouse's notarized signature;
12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
   a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
   b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
   c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
   d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
13. Acknowledgement of the following statements of understanding:
   a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
   b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
   c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
      i. The date ASRS receives the most recent Acceptable Documentation; or
      ii. The retirement date contained in the most recent Acceptable Documentation.
   d. The member has received the Special Tax Notice Regarding Plan Payments;
   e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
   f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
   g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
   h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
   i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
14. The member's notarized signature.

C. If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).

D. If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

E. A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:

1. The type of account and account number to which the member is electing to roll over;
2. The name and address of the financial institution of the account to which the member is electing to roll over; and
3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.

F. If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.

G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.

H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
1. The number of the service purchase invoice;
2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
   a. The amount of the partial lump sum distribution to be applied to that invoice; or
   b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.

I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.

J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.

K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).

L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.

M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.

N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
2. The member's total salary paid during their last fiscal year;
3. The member's compensation for the last pay period;
4. The name and title of the authorized Employer representative;
5. Certification by the authorized Employer representative that:
   a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
   b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.

O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.

P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of $100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.

Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.

R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and

3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.

S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.

T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.

U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.

V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.

W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.

X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:

1. The member's full name;
2. The member's bank account routing number;
3. The member's bank account number; and
4. The type of the account.

Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).

Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

R2-8-127. Re-Retirement Application

A. The definitions in R2-8-126 apply to this Section.

B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:

1. The information identified in R2-8-126(B)(1) through (B)(8);
2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
3. The information identified in R2-8-126(B)(11);
4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
6. Acknowledgement of the following statements of understanding:
   a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
   b. The member understands that as a re-retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
   c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
   d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;

e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.

7. The member's notarized signature.

C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-128. Joint and Survivor Retirement Benefit Options

A. The definitions in R2-8-126 apply to this Section.
B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
2. The member submits a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.

E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
2. The member submits a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.

F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

R2-8-129. Period Certain and Life Annuity Retirement Options

A. The definitions in R2-8-126 apply to this Section.
B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant

A. The definitions in R2-8-126 apply to this Section.

B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.

C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.

D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.

E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.

F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.

G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.

J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.

K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.

L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.

M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:

1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The member's marital status, if not On File with ASRS;
4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
5. The member's notarized signature acknowledging the following statements of understanding:
   a. For rescinding a retirement election:
      i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
      ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or a DRO is required if the member retired or re-retired on or after July 1, 2008;
      iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
   b. For changing a contingent annuitant or beneficiary:
      i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
      ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
      iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
      iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
   c. For reverting to a previously elected retirement benefit option according to A.R.S. § 38-760:

i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of Legal Documentation showing the contingent annuitant's date of birth is required and the member's benefit will be recalculated based on the member's age and the age of the member's contingent annuitant as of the effective date of the member's request according to this Section;
iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.

6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
   a. Full name;
   b. Social Security number, if the contingent annuitant is a U.S. citizen;
   c. Date of birth; and
   d. Legal relationship to the member.
7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
   a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
   b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
   c. The member changing or ending the spouse's contingent annuitant status.
8. Whether the spouse's consent is not required because:
   a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
   b. The member is divorced and if so, provide a DRO.

N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.

O. The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.

P. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of a DRO.

Q. The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation

A. The definitions in R2-8-126 apply to this Section.

B. In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
1. The Member's full name and one or more of the following information:
   a. The Member's Social Security number or U.S. Tax Identification number; or
   b. The Member's address; or
   c. The Member's date of birth;
2. The following information for the beneficiary:
   a. The full name of the person or entity the member is designating as beneficiary;
   b. Whether the beneficiary is being designated as primary or secondary beneficiary;
   c. The percentage of the benefit the member is allocating to the beneficiary; and
3. The member's notarized signature.

C. If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).

D. If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.

E. Effective July 1, 2013, a married member:
1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50% of the member's retirement account unless:
   a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or

b. The spouse consents to an alternate beneficiary;

2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
   a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
   b. The spouse consents to an alternate contingent annuitant; or
   c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.

F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).

G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.

H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).

J. A married member who re-retires according to A.R.S. § 38-766:
1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).

K. If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.

L. If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
   a. Provide the spouse with an opportunity to waive the right under subsection (E); and
   b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.

M. If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The spouse's assertion to the spouse's right to community property;
4. An original or copy of the marriage certificate; and
5. An original or certified copy of the member's death certificate.

N. If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§ 25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.

O. The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.

P. If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.

Q. Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.

R. A DRO may supersede the requirements in subsection (B).

S. To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
1. Member's full name;
2. Member's Social Security number or U.S. Tax Identification number;
3. Whether the member's spouse is consenting to one or more of the following:
   a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;

b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
c. The member naming a contingent annuitant other than the spouse; and
d. The spouse's notarized signature.

T. A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The spouse's full name;
4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.

U. A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3). Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

R2-8-132. Survivor Benefit Options

A. The definitions in R2-8-126 apply to this Section.

B. If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S.§ 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.

C. If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.

D. According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
1. The present value of the benefits based on the remaining period certain term; or
2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.

E. Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.

F. If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.

G. If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:
1. Full name;
2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
3. Address; and
4. Notarized signature acknowledging the following statements:
   a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
   b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
   c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
   d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
   e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.

H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-133. Survivor Benefit Applications

A. The definitions in R2-8-126 apply to this Section.

B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.

C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.

D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:

1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
3. A certified copy of the court order of appointment as administrator, if applicable; and
4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
    a. The deceased member's full name,
    b. The deceased member's Social Security number or U.S. Tax Identification number,
    c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
    d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
        i. The claimant's full name;
        ii. The name of the institution to which the claimant is electing to roll over;
        iii. The address of the institution to which the claimant is electing to roll over;
        iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
        v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
    e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
        i. Whether the bank account is a checking or savings account;
        ii. The name of the banking institution to which the benefit is being sent;
        iii. The routing number;
        iv. The account number; and
    f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
        i. Full name;
        ii. Mailing address, if not On File with ASRS;
        iii. Date of birth, if applicable; and
        iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
    g. The following statements of understanding:
        i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
        ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
        iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
        iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
            (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
            (2) They are not subject to backup withholding because:
                (a) They are exempt from backup withholding, or
                (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
                (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
            (3) They are a legal resident of the United States, unless they are an estate or trust.
        v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
        vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
        vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;

viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.

5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
   a. The following information for the member:
      i. Full name;
      ii. Social Security number or U.S. Tax Identification number;
      iii. Date of death; and
   b. The following information for the beneficiary:
      i. Legal relationship to the member;
      ii. Full name;
      iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
      iv. Mailing address, if not On File with ASRS;
      v. Date of birth, if not On File with ASRS;
      vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
         (1) Whether the bank account is a checking or savings account;
         (2) The name of the banking institution to which the benefit is being sent;
         (3) The routing number;
         (4) The account number; and
   c. The following statements of understanding:
      i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
      ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
      iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
   d. The contingent annuitant's notarized signature.

E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.

F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).

G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.

H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.

I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
1. The claimant's name;
2. The claimant's Social Security number or U.S. Tax Identification number;
3. The claimant's mailing address;
4. The member's name;
5. The member's Social Security number or U.S. Tax Identification number;
6. The date of the member's death;
7. The state and county where the member died;
8. Statements indicating:

a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
c. The claimant is the successor of the member and is entitled to the member's personal property because:
   i. The claimant is named in the member's will; or
   ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
f. If there are other surviving heirs, then the name and relationship of each surviving heir;
g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
h. The claimant's notarized signature.

J. If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.

K. Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than $10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
2. The member's Social Security number or U.S. Tax Identification number;
3. The minor beneficiary's full name;
4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
5. The full name of the minor beneficiary's legal guardian;
6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.

L. Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is $10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.

M. The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.

N. If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.

O. Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.

P. If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.

Q. If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.

R. If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.

S. If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

Table 1. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again

by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 2. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 3. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 4. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 5. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 6. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 7. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 8. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 9. Repealed

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 10. Repealed

Historical Note

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 11. Repealed

Historical Note

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Exhibit A. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit C. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule

adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 1. Repealed

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 2. Repealed

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit G. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit H. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Exhibit I. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit J. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit K. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 7. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R.

2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-202. Premium Benefit Eligibility and Benefit Determination

A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:

1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
   a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
   b. One Family Calculation of the Premium Benefit described in R2-8-204(B).

4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
   a. The retired member has an Original Retirement Date prior to August 2, 2012; or
   b. The Disabled member became Disabled prior to August 2, 2012;
5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
   a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
   b. One Family Calculation of the Premium Benefit described in R2-8-204(B).

B. Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.

C. Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.

D. A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.

E. Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-203. Payment of Premium Benefit

A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.

B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.

C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
   1. Not reduce the retired member's pension amount; and
   2. Remit payment of the Premium Benefit to the retired member's insurance company.

D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
   1. Not reduce the retired member's pension amount; and
   2. Remit payment of the Premium Benefit to the Arizona Department of Administration.

E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.

F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.

G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.

H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
   1. The actual cost of the Coverage premium; or

2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.

I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-204. Premium Benefit Calculation

A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.

B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.

C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:

1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.

D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-205. Premium Benefit Documentation

A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.

B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.

C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):

1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
5. The type of change that is being made to the Coverage;
6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
   a. First and last name;
   b. Social Security number or U.S. Tax Identification number;
   c. Date of birth; and
   d. Medicare number, if applicable.
7. The old and new premium amounts for Coverage;
8. The effective date of the change, deletion, and/or enrollment;
9. The Employer's name and telephone number;
10. A certification by the Employer representative's dated signature that the information is current and correct.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-206. Six-Month Reimbursement Program

A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).

B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.

C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.

D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:

1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
2. The retired member's or Disabled member's full name;
3. The retired member's or Disabled member's mailing address and phone number;
4. The retired member's or Disabled member's date of birth;
5. The retired member's or Disabled member's status with the ASRS;
6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
7. The following Coverage information for the Coverage policy holder:
   a. First and last names;
   b. Social Security number or U.S. Tax Identification number;
   c. Date of birth;
   d. Effective date of Coverage;
8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
   a. First and last name;
   b. Social Security number or U.S. Tax Identification number;
   c. Date of birth;
   d. Effective date of Coverage;
9. Six-month reimbursement totals identified by:
   a. The month and year the premium is due for Coverage;
   b. The total medical plan premium per month;
   c. The total dental plan premium per month;
   d. The employee's out-of-pocket payroll deduction for a medical premium per month;
   e. The employee's out-of-pocket payroll deduction for a dental premium per month;
   f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
10. The Employer's name;
11. The Employer's phone number;
12. The Employer's email address;
13. The name of the Employer's representative; and
14. The dated signature of the Employer's representative.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-207. Optional Premium Benefit

A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:

1. The retired member elects a retirement option under A.R.S. § 38-760; and
2. The retired member elects to maintain Coverage.

B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).

C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.

D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:

1. The retired member's Social Security number or U.S. Tax Identification number;
2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;

3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
   a. The Social Security number or U.S. Tax Identification number;
   b. The full name; and
   c. The date of birth, if not On File; and
4. Certification of understanding by the retired member's dated signature of the following statements:
   a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
   b. I must elect a Joint & Survivor or Period-Certain annuity option;
   c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
   d. I must provide proof of birth date for my Contingent Annuitant;
   e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
   f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.

E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.

F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
3. The Contingent Annuitant is eligible to receive at least one monthly payment.

G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).

H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.

I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

ARTICLE 3. LONG-TERM DISABILITY

R2-8-301. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
   a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
   b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
   c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
   d. Who is licensed to practice in the jurisdiction where care is being given;
   e. Who is practicing within the scope of the license; and
   f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
2. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
3. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
4. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
6. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-302. Application for Long-Term Disability Benefit

A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.

B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.

C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.

D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-303. Long-Term Disability Calculation

A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).

B. For a member whose monthly compensation is $0 as of the date of disability, the ASRS shall pay a monthly benefit of $50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).

C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).

D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

R2-8-304. Payment of Long-Term Disability Benefit

A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.

B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.

C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

D. Notwithstanding any other Section, a member may receive Long-Term disability benefits for no more than 12 months after the member receives a required minimum distribution of the member's retirement benefit pursuant to A.R.S. § 38-775.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 28 A.A.R. 1255 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

R2-8-305. Social Security Disability Appeal

A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.

B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.

C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:

1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.

D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

R2-8-306. Approval of Social Security Disability

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.
4. "Health Plan" means an arrangement under which ASRS engages a Health Plan Vendor for coverage for members and their eligible dependents for routine, preventive, and emergency health-care procedures, pharmaceuticals, dental, vision, or other services and benefits funded through an insurance policy in which the Health Plan Vendor processes and pays claims as an insurer, or a self-funded arrangement in which the Health Plan Vendor processes and pays claims using ASRS funds.
5. "Health Plan Vendor" means an entity that enters into a contract with ASRS to provide an insured Health Plan or to administer, process, and pay claims for a Health Plan self-insured by ASRS.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:

1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision or Health Plan Vendor decision.

B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:

1. The decision the agency is making in response to the letter of appeal; and
2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.

C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.

D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
1. The agency action the ASRS is taking in response to the letter of appeal; and
2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
1. The name and mailing address of the member, employer, or other person filing the Request;
2. The name and mailing address of the attorney for the person filing the Request, if applicable;
3. A concise statement of the reasons for the appeal.

F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).

G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).

H. Pursuant to subsection (B):
1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

I. The Board has delegated to each Health Plan Vendor the authority to:
1. Interpret and apply the terms of the Health Plan Vendor's particular Health Plan;
2. Determine whether a particular benefit is included in the Health Plan and, if included, the amount of payment to be made under the Health Plan; and
3. Perform a full and fair review of any decision by the Health Plan Vendor regarding benefits included in or payments to be made under the Health Plan if the decision is appealed in accordance with the Health Plan Vendor's specified procedures.

J. An individual who is enrolled in a Health Plan made available by ASRS and who wishes to appeal a decision by the Health Plan Vendor shall follow the appeal procedures specified in the applicable Health Plan description.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 28 A.A.R. 223 (January 21, 2022), with an immediate effective date of January 5, 2022 (Supp. 22-1).

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.

B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.

C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.

D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;

2. Misconduct of the Board, the hearing officer, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the 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 process of the action; or
7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.

F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.

G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.

H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.

I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
   a. Eligible Member's Current Years of Credited Service;
   b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
   c. Amount of Service Credit the member wishes to purchase; and
   d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).

12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty under A.R.S. § 38-745 in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty under A.R.S. § 38-745 with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
    a. The member's full name;
    b. The member's Social Security number;
    c. Type of discharge the member received; and
    d. Active Duty dates, if applicable; or
    e. Active Reserve Duty dates, if applicable; and
    f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service, and Other Public Service that an Eligible Member may purchase.
22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
    a. After accepting an offer to work for a new Employer;
    b. While working as an active member for a different Employer; or
    c. Before returning to work with any Employer within 120 days of terminating employment.
26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

R2-8-502. Request to Purchase Service Credit and Notification of Cost

A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
1. Name;
2. Mailing address;
3. Date of birth;
4. Marital status;
5. Gender;
6. Primary email address;

7. Primary phone number; and
8. Which category of Service Credit the Eligible Member is requesting to purchase.

B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.

C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
2. Instructions for electing method of payment; and
3. The date payment election is due.

D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.

E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-503. Requirements Applicable to All Service Credit Purchases

A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.

B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.

C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
1. Leave of Absence Service;
2. Military Service;
3. Forfeited Service; and
4. Other Public Service.

D. An Eligible Member may cancel an active request by notifying the ASRS in writing.

E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
1. The amount the Eligible Member wants to apply, and
2. The Eligible Member's dated signature

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F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-504. Service Credit Calculation for Purchasing Service Credit

A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.

B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.

C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:

1. Leave of Absence Service;
2. Military Service; and
3. Other Public Service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-505. Restrictions on Purchasing Overlapping Service Credit

A. The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:

1. One year of credited service in any plan year, or
2. One month of credited service in any one calendar month.

B. A member may not purchase Service Credit for any period of time for which the member is eligible to receive retirement benefits from another public employee retirement system.

C. For purposes of this Section, "another public employee retirement system" means any retirement plan providing retirement benefits and maintained by the United States government, a state, territory, commonwealth, overseas possession or insular area of the United States or a political subdivision of a state, territory, commonwealth, overseas possession or insular area of the United States.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

R2-8-506. Cost Calculation for Purchasing Service Credit

A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:

1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.

B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:

1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
2. The year and month the Eligible Member believes the ASRS returned retirement contributions.

B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit

A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
1. The following information completed by the Eligible Member:
   a. The start date and end date of the approved leave of absence;
   b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
   c. The name of the Employer;
   d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
   e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
2. Acknowledgement of the following statements of understanding:
   a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
   b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
   c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
3. The Eligible Member's dated signature.

B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.

C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.

D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
1. The Employer has verified all the dates for the approved leave of absence period are correct; and
2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.

E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-509. Required Documentation and Calculations for Military Service Credit

A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
2. A Military Service form that contains:
   a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
   b. The branch of the Uniformed Services the Eligible Member was in;
   c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
   d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
   e. Acknowledgement that the Eligible Member will submit to the ASRS:
      i. Proof of honorable separation for each type of Military Service listed on the form; and
      ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
   f. Acknowledgement of the following statements of understanding:

i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and

ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.

B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.

C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.

D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit

A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:

1. The Eligible Member's full name;
2. The Eligible Member's Social Security number;
3. The start date of Military Call-up Service;
4. The end date of Military Call-up Service;
5. The date the Eligible Member returned to work for the Employer;
6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
7. The name of a contact individual for the Employer, and that individual's business telephone number;
8. The contact individual's dated signature;
9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
12. Acknowledgement of the following statements of understanding:
    a. All the dates and payroll information for the Military Call-up Service are correct;
    b. The Eligible Member:
        i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
        ii. Was disabled and unable to return to work; or
        iii. Died during or as a result of Active Duty.
    c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
    d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
    e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.

B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).

C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.

D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the

amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).

E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).

F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:

1. The name and mailing address of the Other Public Service employer;
2. The position the Eligible Member held while working for the Other Public Service employer;
3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
   a. The approximate date the Eligible Member took a return of retirement contributions;
   b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or
   c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
7. Acknowledgement that

if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.

B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.

C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order

A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.

B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513. Purchasing Service Credit by Irrevocable PDA

A. An Eligible Member may purchase Service Credit by Irrevocable PDA.

B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:

1. Acknowledgements:
   a. This Irrevocable PDA is binding and irrevocable;
   b. This Irrevocable PDA shall remain in effect until the earlier of:

i. The authorized payroll deductions are completed; or
ii. The Eligible Member terminates employment.

c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B)(1)(e); and

2. Statements of Understanding:
a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
i. Terminating employment;
ii. Terminating LTD without returning to work with an Employer; or
iii. The effective ASRS retirement date;
f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.

C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.

D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:

1. A statement that the Eligible Member:
a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;
c. Understands that the election to use Termination Pay is binding and irrevocable;
d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and

2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.

E. The ASRS shall:

1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
2. Limit the payroll deduction time period to a maximum of 520 payments; and

3. Require a minimum payment of $10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.

F. The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.

G. If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.

H. A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.

I. Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
3. Eligible Member terminates all ASRS employment without transferring employment; or
4. Date of the Eligible Member's death.

J. If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.

K. When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.

L. By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).

M. The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer

A. If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.

B. If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.

C. Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.

D. If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.02. Termination Date

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:
1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
   a. 90 days from the date of separation from military call-up;
   b. 90 days from the date released from the hospital, if injured while on military call-up; or

c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.

3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
   a. The date the Eligible Member's request for long-term disability benefits are denied;
   b. The date the Eligible Member no longer has leave with pay available; or
   c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer

A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.

B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.

C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
1. The name of the financial institution or plan;
2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
3. Acknowledgement of the following information:
   a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
   b. The only fund types that the ASRS accepts are:
      i. 401(a);
      ii. 401(k) pre-tax only;
      iii. 403(b);
      iv. Governmental 457 pre-tax only;
      v. 403(a) pre-tax only;
      vi. 408 Traditional IRA pre-tax only;
      vii. 408(k) SEP IRA pre-tax only;
      viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
   c. The ASRS shall not accept the following fund types:
      i. Roth funds;
      ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
      iii. Inherited IRA;
      iv. Coverdale Education Savings Account funds;
      v. Hardship distributions;
      vi. Funds not includable in gross income;
      vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
      viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
      ix. One of a series of substantially equal periodic payments made for 10 years or more;
      x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
   d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
   e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
   f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
   g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.

D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
1. The Eligible Member's full name;
2. The last 4 digits of the Eligible Member's Social Security number;
3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
4. The Authorized Representative's name and title;
5. The Authorized Representative's telephone number; and
6. Certification by the Authorized Representative's dated signature that:
   a. The plan is either:
      i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
      ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
      iii. An annuity contract described in IRC § 403(b); or
      iv. An IRA described in A.R.S. § 38-747(H)(3);
   b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
   c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and
   d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.

E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.

F. The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

R2-8-515. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-516. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-517. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-518. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-519. Purchasing Service Credit by Termination Pay

A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.

B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.

C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:

1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
   a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
   b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
   c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
   d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
   e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
   f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
   g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
   h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
   i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
   j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.

D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.

E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.

F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.

G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA

A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.

B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:

1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
2. The principal payments made by the Eligible Member; and
3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.

D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-521. Adjustment of Errors

A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.

B. The ASRS shall notify the member in writing of any adjustments.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

R2-8-601. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-603. Petition for Rulemaking

A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:

1. The name and current address of the person submitting the petition;
2. An identification of the rule to be made or amended;
3. The suggested language of the rule;
4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
   a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
   b. If applicable, statistical data with references to attached exhibits;
5. The signature of the person submitting the petition; and
6. The date the person signs the petition.

B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement

A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
1. The name and current address of the person submitting the petition,
2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
3. The signature of the person submitting the petition, and
4. The date the person signs the petition.

B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.

C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact

A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
1. The name and current address of the person submitting the objection;
2. Identification of the rule;
3. Either evidence that the actual economic, small business and consumer impact:
   a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
   b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits; or
   c. Reflects that the ASRS did not select the alternative that 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.
4. The signature of the person submitting the objection; and
5. The date the person signs the objection.

B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-606. Oral Proceedings

A. A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.

B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.

C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
2. Provide a Request to Present Oral Comment form that includes space for:
   a. The name of the person submitting the Request to Present Oral Comment form,
   b. The entity the person represents, if applicable, and
   c. The rule on which the person wishes to comment or about which the person has a question;
3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
4. Explain the background and general content of the proposed rulemaking;
5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.

D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-607. Petition for Delayed Effective Date

A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
1. Name and current address of the person submitting the petition;
2. Identification of the proposed rule;
3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
4. Reason why the public interest will not be harmed by the delayed effective date;
5. Signature of the person submitting the petition; and
6. Date the person signs the petition.

B. The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions

The following definitions apply to this Article unless otherwise specified:
1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
   a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
   b. The number of hours the member worked or was Engaged to Work for the Employer per pay period, and
   c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
   a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
   b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

R2-8-702. General Information

A. The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.

B. The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.

C. The ASRS shall not waive payment of contributions or interest owed under this Article.

D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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R2-8-703. Employer's Discovery of Error

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
    a. All the dates and salary information is correct;
    b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
    c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
    d. Acknowledgement the member will receive an invoice for their contributions owed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-704. Member's Discovery of Error

A. If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:

1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
    a. The name of the Employer that should have remitted contributions;
    b. The range of dates that any contribution was not withheld;
    c. The member's position title during the date range listed in subsection (A)(2)(b);
    d. Whether the member was Engaged to Work for the Employer; and
    e. Dated signature of the member certifying the member understands:
        i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
        ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.

B. If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall either correct the information and submit the corrected information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703 or cancel the request by notifying the member through ASRS secure messaging the reason the request was canceled.

C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

R2-8-705. ASRS' Discovery of Error

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

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Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-706. Determination of Contributions Not Withheld

A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.

B. Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:

1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
2. The employee participates in:
   a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
   b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.

C. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.

D. If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.

E. The ASRS shall provide to each, Employer and the member, an invoice with the following:

1. The amount of Eligible Service for which contributions were not withheld,
2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
5. The dollar amount of contributions to be paid to the ASRS by the member.

F. The ASRS shall send the member an invoice according to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

R2-8-707. Submission of Payment

A. Within 90 days from the date on the statement invoice identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).

B. The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).

C. If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.

D. A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 28 A.A.R. 1366 (June 10, 2022), with an immediate effective date of May 18, 2022 (Supp. 22-2).

R2-8-708. Expired

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R2-8-709. Repealed

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Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 8. RECOVERY OF OVERPAYMENTS

R2-8-801. Definitions

For purposes of this Article, the following definitions apply, unless specified otherwise:

1. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
2. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
3. "LTD benefit" means the same as in R2-8-301.
4. "Overpayment" means:
   a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
   b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

A. The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
   1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by $50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
   2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by $50 per month pursuant to A.R.S. § 38-797.07(A)(9).

B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.

C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.

D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).

E. Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
   1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
   2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.

F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-803. Reimbursement of Overpayments

A. Upon the ASRS discovering that it has made an overpayment to an Employer, member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.

B. A person, other than Employer, who reimburses the ASRS for an overpayment shall do so by remitting a check or money order, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.

C. An Employer that reimburses the ASRS for an overpayment shall do so by remitting payment through the Employer's secure ASRS account, or by check or money order made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.

D. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to Employers, members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
E. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.
F. If an Employer, member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS may reduce a Health Insurance Premium Benefit that is paid pursuant to Article 2.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

R2-8-804. Collection of Overpayments from Forfeiture

A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-805. Collection of Overpayments from Retirement Benefit

A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than $5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus $5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than $5.00;
3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus $5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than $5.00 and pursue collection pursuant to subsection (C).

C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.

D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-806. Collection of Overpayments from Survivor Benefit

A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to

R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-807. Collection of Overpayments from LTD Benefit

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-808. Collection of Overpayments by the Attorney General

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue

If an Employer, member, survivor, or alternate payee does not reimburse the ASRS for an overpayment pursuant to R2-8-803, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 28 A.A.R. 1261 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

R2-8-810. Collection of Overpayments by Garnishment or Levy

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this Article by garnishing wages and/or placing a levy on the appropriate person's bank account.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

ARTICLE 9. COMPENSATION

R2-8-901. Definitions

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-902. Remitting Contributions

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

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Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-903. Accrual of Credited Service

A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer's pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.

B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-904. Compensation from An Additional Employer

A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:

1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member's service year.

B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).

C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-905. Expired

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

ARTICLE 10. MEMBERSHIP

R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
   a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
   b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

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Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1002. Employee Membership

A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.

B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.

C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.

D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.

E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
1. The Employee's full name;
2. The Employee's Social Security number;
3. The Employee's date of birth;
4. The Employee's gender;
5. The Employee's marital status;
6. The Employee's primary phone number;
7. The Employee's personal email address;
8. The Employee's current mailing address; and
9. The Employee's designated beneficiary.

F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
1. The member's full name that is on file with the ASRS;
2. The member's Social Security number;
3. The member's current mailing address;
4. The member's date of birth;
5. The member's personal email address;
6. The member's primary phone number;
7. The member's gender;
8. The member's marital status;
9. The member's retired, active, inactive, or LTD status with the ASRS;
10. The member's new full name;
11. The type of legal document establishing the member's new name;
12. A copy of the legal document establishing the member's new name; and
13. The member's dated signature.

G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.

H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.

I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
1. The employee's full name;
2. The employee's Social Security number;
3. The employee's current mailing address;
4. The employee's date of birth;
5. The employee's dated signature acknowledging the following statements:
   a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
   b. The employee is not a member of the ASRS as of the date of employment; and
   c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
6. The Employer's name;
7. The date employee's employment began; and

8. The name and dated signature of the Employer's representative.

J. A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1003. Charter School Employer Membership

A. Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
2. A community college district;
3. A group of community college districts;
4. The state board of education; or
5. The state board for charter schools.

B. In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.

C. Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.

D. In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
2. Two ASRS Agreements showing:
   a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
   b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
   c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
   d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
   e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
   f. The ASRS Agreement is binding and irrevocable;
   g. The effective date of the ASRS Agreement;
   h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
   i. The dated signature of the designated authorized agent for the charter school.
3. Two ASRS Resolutions showing:
   a. The legal name of the charter school as sponsored pursuant to subsection (A);
   b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
   c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
   d. The designated authorized agent for the charter school;
   e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
   f. The dated and notarized signature of the designated authorized agent.
4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

E. Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign

the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.

F. Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership

A. A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:

1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.

B. Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.

C. In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:

1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
2. Two ASRS Agreements showing:
   a. The legal name and current mailing address of the political subdivision or political subdivision entity;
   b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
   c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
   d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
   e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
   f. The ASRS Agreement is binding and irrevocable;
   g. The effective date of the ASRS Agreement;
   h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
   i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
3. Two ASRS Resolutions showing:
   a. The legal name of the political subdivision or political subdivision entity;
   b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
   c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
   d. The designated authorized agent for the political subdivision or political subdivision entity;
   e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
   f. The dated and notarized signature of the designated authorized agent.
4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

D. Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1005. Employer Reporting

A. An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.

B. Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
3. Submit the verified information to the ASRS through the Employer's secure ASRS account.

C. For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. §15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
2. Employee's Social Security number;
3. Date of the employee's employment; and
4. Date of the employee's Optional Retirement Plan election.

D. For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.

E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
   a. The person's full name;
   b. The person's title;
   c. The person's phone number;
   d. The person's email address;
   e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;
7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.

F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.

G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).

H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.

I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.

J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.

K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
1. The employee's full name;
2. The number of hours per week the employee works for the Employer;
3. The title of the employee's position;
4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
5. Whether the employee is retired from the ASRS.

Historical Note
New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1006. Prior Service Purchase Cost for New Employers

A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.

B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:

1. The employee's full name;
2. The employee's date of birth;
3. The employee's Social Security number;
4. The employee's current salary; and
5. The date the employee began employment with the potential Employer.

C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:

1. Member's full name;
2. Member's date of birth;
3. Member's Social Security number;
4. Member's date of employment;
5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
6. Member's current salary as of the effective date of joining the ASRS; and
7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.

D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.

E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.

F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.

G. An employer may not purchase service credit pursuant to this Section for a time period for which the employee is eligible to receive retirement benefits from another public employee retirement system.

H. For purposes of this Section, "another public employee retirement system" means the same as in R2-8-505.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4). Amended by final rulemaking at 28 A.A.R. 1257 (June 10, 2022), effective July 17, 2022 (Supp. 22-2).

ARTICLE 11. TRANSFER OF SERVICE CREDIT

R2-8-1101. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
   a. Member's Current Years of Credited Service;
   b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
   c. Member's most recent annual compensation.
2. "Current years of credited service" means:
   a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid; and
   b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
   a. The purchase of service credit;
   b. Contributions not withheld; and
   c. Previous transfers of service credit.

6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit

A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
1. The name of the Other Retirement Plan;
2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
4. The number of years the member participated in the Other Retirement Plan;
5. Acknowledgement the member agrees that:
   a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
   b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.

B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
4. The start date and end date for the member's participation in the Other Retirement Plan.

C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.

D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
   a. The Other Retirement Plan's Funded Actuarial Present Value; or
   b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
   a. The ASRS Actuarial Present Value; or
   b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.

E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
   a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
   b. Accept a proportionately reduced amount of service credit;
2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).

F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.

G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.

H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.

I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.

J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.

K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.

L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.

M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1103. Transferring Service to Other Retirement Plans

A. Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
2. The Member's Accumulated Contribution Account Balance in the ASRS.

B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).

C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:
1. The member's full name;
2. The last four digits of the member's Social Security number;
3. The name of the Other Retirement Plan; and
4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.

D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
1. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
   a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
   b. The Member's Accumulated Contribution Account Balance in the ASRS.
2. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
   a. The Other Retirement Plan's Actuarial Present Value specified in subsection (C); or
   b. The Member's Accumulated Contribution Account Balance in the ASRS.

E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.

F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.

G. If the ASRS has a DRO on file for a member, the ASRS shall not transfer a member's service credit from the ASRS to the Other Retirement Plan unless the DRO indicates whether the member may transfer all ASRS service credit to the Other Retirement Plan.

H. Notwithstanding subsection (G), if the ASRS has a DRO on file for a member that does not indicate whether the member may transfer all ASRS service credit to the Other Retirement Plan, the ASRS shall not transfer a member's service credit from the ASRS to the Other Retirement Plan unless the alternate payee submits written acceptance of the transfer with the alternate payee's notarized signature.

Historical Note

New Section made by final rulemaking by final rulemaking at 28 A.A.R. 1746 (July 22, 2022), effective September 4, 2022 (Supp. 22-3).

38-723. Recovery of collection costs; levy and distraint; definitions

A. A debtor who fails to pay any monies owed to ASRS is liable for all costs and expenses incurred by ASRS to collect the monies owed. ASRS may collect these expenses and costs at the time of collecting the monies owed to ASRS.

B. If a debtor neglects or refuses to pay a debt owed to ASRS after ASRS has made at least two separate attempts to collect the debt and not fewer than thirty days after ASRS determines a debt is owed, ASRS may collect the debt and such other sums as are sufficient to cover the expenses of the levy, by levy on:

1. Cash and cash equivalent property at financial institutions.

2. The accrued salary or wages of the debtor, by serving notice of levy on the chief disbursing officer of the debtor's employer.

C. The financial institution or the chief disbursing officer of the debtor's employer shall notify the debtor of the levy within five business days of the levy. The debtor may appeal the levy to ASRS.

D. The effect of a levy on salary or wages payable to or received by a debtor is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable. ASRS shall promptly release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable and shall promptly notify the debtor on whom the levy was made that the levy has been released.

E. If a levy has been made or is about to be made, any person having custody or control of any books or records containing evidence or statements relating to the property subject to levy, on request from ASRS, shall exhibit the books or records to ASRS.

F. Except as otherwise provided in subsection D of this section, a levy extends only to property possessed and obligations existing at the time of the levy or within thirty days after the date of the levy. In any case in which ASRS may levy on property, ASRS may seize the cash property and may seize and convert cash equivalent property to cash.

G. For the purposes of this section:

1. "Financial institutions" means state and federally chartered banks, trust companies, federal and state savings and loan associations, federal and state credit unions, consumer lenders, international banking facilities and financial institution holding companies, insurance companies, benefit associations, safe deposit companies, money market mutual funds and similar institutions authorized to do business in this state and any party affiliated with these financial institutions.

2. "Levy" includes the power of distraint and seizure by any means.

38-765. Errors; benefit recomputation

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, ASRS shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly

entitled is paid. ASRS shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid. ASRS shall recover monies by reducing any benefit otherwise payable by ASRS or the LTD program established by article 2.1 of this chapter to an active, inactive, person with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.

2. "Assets" means the accumulated resources of the LTD program.

3. "Board" means the ASRS board established pursuant to section 38-713.

4. "Compensation" has the same meaning prescribed in section 38-711.

5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.

6. "Employer" has the same meaning prescribed in section 38-711.

7. "Employer contributions" means all amounts paid into the LTD program by an employer.

8. "Fiscal year" has the same meaning prescribed in section 38-711.

9. "LTD program" means the long-term disability program established by this article.

10. "Member" has the same meaning prescribed in section 38-711.

11. "Monthly compensation" means the amount determined by taking the six pay periods immediately before the date of the member's disability in the fiscal year in which the member develops a disability, disregarding the highest two and lowest two compensation amount pay periods and deriving the mean of the two remaining pay periods. If the member was employed for fewer than six pay periods, monthly compensation is determined by deriving the mean of the number of pay periods the member worked in the fiscal year in which the member develops a disability.

12. "Normal retirement date" has the same meaning prescribed in section 38-711.

13. "Political subdivision" has the same meaning prescribed in section 38-711.

14. "State" has the same meaning prescribed in section 38-711.

38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

38-797.02. LTD trust fund

A. The LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD trust fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source. The LTD trust fund is exempt from title 44, chapter 3. Abandoned monies shall be disposed of pursuant to section 38-722.

C. Custody, management and investment of the LTD trust fund are as prescribed by this article and article 2 of this chapter.

38-797.03. ASRS board; personnel; duties; hearing or review; executive session

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination of their rights, benefits or obligations under this article with a hearing on the determination. Notwithstanding section 38-431.03, the board shall hold a hearing or review of an administrative law judge's written decision in an executive session if the aggrieved person makes such a request. If the board holds a hearing or review in executive session pursuant to this subsection, the board shall use the procedures for an executive session as provided in section 38-431.03. Minutes of and discussions held at an executive session are confidential except from the aggrieved person for the purposes of an appeal of the board's decision to the superior court on the matter that is determined by the board. The aggrieved person must request an executive session hearing at least forty-eight hours before the hearing.

C. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

D. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

38-797.04. Eligibility

All members are subject to this article and shall participate in the LTD program.

38-797.05. Employer and member contributions

A. Beginning July 1, 2011, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay one-half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 2011, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.

38-797.06. Contribution rate; annual report

A. The board shall select an actuary to determine required employer contributions on an annual basis. The actuary shall be a fellow of the society of actuaries.

B. Employer contributions shall be a percentage of compensation of all employees of the employers who meet the eligibility requirements of article 2 of this chapter, as the ASRS actuary determines pursuant to this section. The actuary shall make this determination in an annual valuation performed as of June 30. The valuation as of June 30 of a calendar year shall determine the percentage to be applied to compensation for the fiscal year beginning July 1 of the following calendar year. The actuary shall determine the total employer contribution using an actuarial cost method consistent with generally accepted actuarial standards. The total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a period consistent with generally accepted actuarial standards.

C. All contributions made by the employer and allocated to the LTD trust fund established by section 38-797.02 are irrevocable and shall be used as benefits under this article or to pay expenses of the LTD program.

D. ASRS shall provide a preliminary report on or before November 30 of the valuation year and a final report on or before January 15 of the following year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

38-797.07. LTD program benefits; limitations; definitions

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 9 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four percent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three percent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five percent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty percent of any salary, wages, commissions or other employment-related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. For a member whose disability commences on or after August 2, 2012, a member's monthly income from the monthly LTD program benefits and sources listed in paragraph 1 of this subsection shall not exceed one hundred percent of the member's monthly compensation at the time disability commences. ASRS shall offset the member's monthly LTD program benefits by the amount necessary to reduce the member's total monthly income to meet the limit prescribed in this paragraph.

3. Monthly LTD program benefits are not payable until a member has had a disability for a period of six consecutive months.

4. Monthly LTD program benefits are not payable to a member who files an initial claim for disability more than twelve months after the date of the member's date of disability unless the member demonstrates to ASRS good cause for not filing the initial claim within twelve months after the date of disability.

5. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS, unless the retirement benefits are required pursuant to section 38-775.

6. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

7. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to have a disability.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

8. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

9. Except as provided in paragraph 2 of this subsection, the minimum benefit for a member who is entitled to receive monthly LTD program benefits is $50 per month.

10. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

11. A member shall be considered to have a disability if based on objective medical evidence:

(a) During the first thirty months of a period of disability, the member is unable to perform one or more duties of the occupation held by the member when the member developed a disability.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who is eligible pursuant to article 2 of this chapter and who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member

who receives monthly LTD program benefits on or after June 30, 1999, the number of years of service credited to the member's retirement account during the period ASRS disburses LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS may suspend or terminate benefits under this article if a member fails to provide information, data, paperwork or other materials that are requested by ASRS or the insurance company or claims administrator that is selected by the board to administer the LTD program. ASRS or its contracted administrator may investigate information that indicates a member may have falsified information or records related to LTD program eligibility or benefits or may not otherwise meet the requirements of LTD program eligibility. In connection with an investigation involving the LTD program, ASRS or its contracted administrator may collect and examine any statement or evidence, or may authorize a third party to collect and examine any statement or evidence, that relates to a member falsifying information or records related to LTD program eligibility or benefits. If the member provides the information requested, ASRS shall retroactively reinstate the benefits or claim for which the member qualifies under this article.

E. For the purposes of this section:

1. "Objective medical evidence" means evidence that established facts and conditions, as perceived without distortion by personal feelings, prejudices or interpretations, and includes x-rays, quantitative tests, laboratory findings, data, records, reports from the attending physician and reports from a consulting physician, as applicable.

2. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

3. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231v).

38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. The board shall recover monies by reducing any benefit that is otherwise payable by ASRS or the LTD program to an active, inactive, member with a disability or retired member, survivor, contingent annuitant, beneficiary or alternate payee.

38-797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any member to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article or article 2 of this chapter. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

38-797.12. Violation; classification

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

38-797.13. Reservation to legislature

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

38-797.14. Liquidation of LTD program

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

38-797.15. Interest paid to members and employers

ASRS may not pay interest on any amount paid to a member, an alternate payee or an employer pursuant to this article unless specifically authorized by this article.

ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS
Title 4, Chapter 17, Article 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: December 6, 2022; March 7, 2023

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

FROM: Council Staff

DATE: February 13, 2023

SUBJECT: **ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**
Title 4, Chapter 17, Article 2

Summary

This One-Year Review Report (1YRR) from the Arizona Regulatory Board of Physician Assistants (Board) relates to rules in Title 4, Chapter 17, Article 2 regarding fees and charges for licensure. These rules were amended under an exemption provided by Laws 2021, Chapter 320, Section 24, an emergency measure that was created to expand the availability of telehealth services in order to meet the health care needs of Arizonans. In a rulemaking that went into effect on September 22, 2021, the Board established a one-time $200 fee for out-of-state health care providers to register to provide physician assistant services by telehealth in Arizona. In this rulemaking, the Board also amended the time frame table to include the applicable time frames for registration as an out-of-state provider of telehealth services.

The Board submitted this 1YRR pursuant to A.R.S. § 41-1095.

As a reminder, this 1YRR was previously considered at the November 29, 2022 Study Session and December 6, 2022 Council Meeting. At those meetings, the Council raised concerns regarding the Board's analysis determining the fee amount for out-of-state healthcare provider telehealth registration, particularly in relation to lower telehealth registration fees charged by other states. At the December 6, 2022 Council Meeting, the Council voted to table consideration of the 1YRR for Title 4, Chapter 17, Article 2, to allow the Board additional time to take the

Council's comments and suggestions regarding the telehealth registration fee back to the Board's Joint Legislative and Rules Committee (Committee).

The Board indicates it will meet on February 22, 2023 and a revised submission to the Council will follow in preparation for the February 28, 2023 Study Session. Council staff will circulate the revised submission when it is received.

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: December 6, 2022

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

FROM: Council Staff

DATE: November 21, 2022

SUBJECT: **ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**
Title 4, Chapter 17, Article 2

Summary

This One-Year Review Report (1YRR) from the Arizona Regulatory Board of Physician Assistants (Board) relates to rules in Title 4, Chapter 17, Article 2 regarding fees and charges for licensure. These rules were amended under an exemption provided by Laws 2021, Chapter 320, Section 24, an emergency measure that was created to expand the availability of telehealth services in order to meet the health care needs of Arizonans. In a rulemaking that went into effect on September 22, 2021, the Board established the fee for out-of-state health care providers to register to provide physician assistant services by telehealth in Arizona. In this rulemaking, the Board also amended the time frame table to include the applicable time frames for registration as an out-of-state provider of telehealth services.

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 at the time that the rulemaking was completed. In the 11 months since the rule went into effect, the Board has not received any applications to register as an out-of-state provider of physician assistant services by telehealth. As a result, the Board has received no registration fees.

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 that the benefits of allowing out-of-state providers to register to provide telehealth services outweighed the costs to the state.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee of $200. For this one-time fee, the Board is required to evaluate the information submitted by an out-of-state provider, supervise compliance for as long as the provider chooses to provide telehealth services to Arizona residents, and receive and evaluate annual updates from the provider. Based on the legislature's cost-benefit determination and the limited authority provided under A.R.S. § 36-3606, the Board concludes that the benefits of the rule outweigh the costs.

The time frames listed in Table 1 run against the Board. These time frames do not regulate out-of-state health care providers.

The Board indicates that the fee amount is reasonable compared to the telehealth registration fees established by other states. Additionally, the Board indicates that the fee amount is comparable to the standard licensure fees. Council staff believes that the Board has adequately shown that the rules impose the least burden and costs to those regulated.

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 since the rule was adopted.

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

   Yes, the Board indicates that the rules are clear, concise, and understandable.

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

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

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

   Yes, the Board states that 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 there is no 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. R4-17-204 and Table 1 only specify the required fee.

12. **Conclusion**

    Council staff finds that the Board has submitted an adequate report pursuant to A.R.S. § 41-1095. Council staff recommends approval of this report.

Douglas A. Ducey
Governor

Arizona Regulatory Board of Physician Assistants

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Susan Reina, PA-C
Chair

August 30, 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 Regulatory Board of Physician Assistants
One-year-review Report
R4-17-204 and Table 1

Dear Ms Sornsin:

Please find enclosed the referenced one-year-review report. The report is due to be submitted by September 22, 2022.

The Board complies with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Patricia McSorley, at 480-551-2791 or patricia.mcsorley@azmd.gov.

Sincerely,

Patricia C. McSorley

Patricia McSorley
Executive Director

ONE-YEAR-REVIEW REPORT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS
Submitted for November 1, 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 September 22, 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 Table 1 and R4-17-204, 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. § 32-2504(C)

1. Specific statute authorizing the rule: A.R.S. §§ 36-3606(A)(3) and 41-1073

2. Objective of the rule:
   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.

   R4-17-204. Fees and Charges: The objective of this rule is to establish the fees the Board charges for the licenses and registrations it issues.

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 no applications to register as an out-of-state provider of physician assistant services by telehealth. As a result, the Board has received no registration fees and has deposited no monies in the state's general fund or the Arizona Medical Board fund.

   The Board acts within the time frames specified in Table 1.

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 physician assistant 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). In establishing these paperwork and compliance requirements, the legislature determined the requirements imposed the least burden and costs on out-

of-state providers of physician assistant services by telehealth necessary to achieve the underlying regulatory objective.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee. The fee is the only compliance cost established by the Board in the reviewed rules. For this one-time fee, the Board is required to evaluate the application 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 and evaluate an annual update from the out-of-state provider. The legislature did not authorize the Board to establish a fee for the annual renewal of the registration by an out-of-state provider of telehealth services.

The rules reviewed for this report comply with the minimal authority the legislature provided to the Board. R4-17-204 establishes the fee the Board charges for an out-of-state health care provider to register to provide telehealth services in Arizona. In establishing the fee amount, the Board assumed registered out-of-state providers would maintain their telehealth registrations because the only cost to the out-of-state providers is to submit a renewal registration form. The Board is required to supervise compliance of the out-of-state providers and process the annual registration forms without authority to charge a renewal fee. Because this is the only authority provided to the Board and because the legislature determined there is benefit in allowing out-of-state providers of 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.

Currently, there are only 6 other states, like Arizona, that offer an out-of-state physician/physician assistant the ability to practice via telehealth by way of a registration.

States with Telehealth Registration and Fees:

1. Florida No fee
2. West Virginia $175 for an MD and PA $100
3. Vermont MD- $ and PA $ 175
4. Indiana No fee
5. Minnesota $75 Annually, plus an application fee of $100
6. Kansas $100

A majority of the states, and the standard at this time, is that a physician/physician assistant who wishes to practice telemedicine in the state where a patient is located, must be licensed in and pay the licensing fee associated with practice in that state

Both the AMB and the ARBoPA applied the " reasonable" standard approach when setting the telehealth registration fee, considering both the cost of the administration and the oversight of the telemedicine registration, including the lack of a renewal fee associated with the annual updating of the registration. The fees were not set to create a barrier or to limit out of state providers from practicing telemedicine within Arizona. The established fees for the telehealth registration are consistent with the fees currently charged for licensure. The MD licensure fee is $ 500, with a renewal fee of $500 every two years. The PA licensure fee for two years is $370 prorated at time of licensure, with a renewal fee of $370 every two-years.

Currently, the Agency has a licensing department consisting of 12 employees working continuously on the various license application types offered in the State of Arizona: initial license, licensure by endorsement, Compact license, Universal Recognition License Medical Graduate Training Permit, temporary license, and the telehealth training permit. The same staff also process license applications for physician assistants. The same licensing staff also process the renewals for the 28,352 physicians and the 4385 physician assistants.

Taking into consideration the range of fees set by the minority of states that have a telehealth registration, and after reviewing the one-time fees set by the AMB and the ARBoPA for the administration and oversight of the telehealth registration, it would be reasonable to conclude that the probable benefit outweighs to cost to those registering to provide telehealth services in Arizona.

12. Is the rule more stringent than corresponding federal laws?

The function of professional licensing and regulation is a state's right and there are no federal laws giving or providing telehealth registration.

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 R4-17-204 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.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

Table 1. Time Frames (in days)

Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Regular License including schedule II or schedule III controlled substances approval R4-17-203	120	30	365	90	90
License Renewal R4-17-206	75	30	60	45	60
Registration as an Out-of-state Health Care Provider of Telehealth Services A.R.S. § 36-3606(A)(3)	40	20	30	20	30

R4-17-204. Fees and Charges

A. As expressly authorized under A.R.S. § 32-2526(A)(1) through (4), the Board shall charge the following fees:
1. License application - $125.00;
2. Regular license - $370.00, prorated for each month remaining in the biennial period;
3. Regular license renewal - $370.00 if the renewal application is postmarked no later than the applicant's birthdate; and
4. Penalty for late renewal - $100.00.

B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: $200.

C. The fees specified in subsections (A) and (B) are nonrefundable unless A.R.S. §§ 32-2526(B) or 41-1077 applies.

D. As expressly authorized under A.R.S. § 32-2526(A)(5) through (9), the Board establishes the following charges for providing the services listed:
1. Duplicate license - $25.00;
2. Copies of Board documents - $1.00 for first three pages, $.25 for each additional page;
3. Medical Directory (CD-ROM) - $30.00;
4. Data Disk - $100.00; and

32-2504. Powers and duties; delegation of authority; rules; subcommittees; immunity

A. The board shall:

1. As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.

2. License and regulate physician assistants pursuant to this chapter.

3. Order and evaluate physical, psychological, psychiatric and competency testing of licensees and applicants the board determines is necessary to enforce this chapter.

4. Review the credentials and the abilities of applicants for licensure whose professional records or physical or mental capabilities may not meet the requirements of this chapter.

5. Initiate investigations and determine on its own motion whether a licensee has engaged in unprofessional conduct or is or may be incompetent or mentally or physically unable to safely perform health care tasks.

6. Establish fees and penalties pursuant to section 32-2526.

7. Develop and recommend standards governing the profession.

8. Engage in the full exchange of information with the licensing and disciplinary boards and professional associations of other states and jurisdictions of the United States and foreign countries and a statewide association for physician assistants.

9. Direct the preparation and circulation of educational material the board determines is helpful and proper for its licensees.

10. Discipline and rehabilitate physician assistants pursuant to this chapter.

11. Certify physician assistants for thirty-day prescription privileges for schedule II, schedule III, schedule IV and schedule V controlled substances that are opioids or benzodiazepine and ninety-day prescription privileges for schedule II, schedule III, schedule IV and schedule V controlled substances that are not opioids or benzodiazepine if the physician assistant either:

(a) Within the preceding three years of application, completed forty-five hours in pharmacology or clinical management of drug therapy or at the time of application is certified by a national commission on the certification of physician assistants or its successor.

(b) Met any other requirement established by board rule.

B. The board may delegate to the executive director the board's authority pursuant to this section or section 32-2551. The board shall adopt a substantive policy statement pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

C. The board may make and adopt rules necessary or proper for the administration of this chapter.

D. The chairperson may establish subcommittees consisting of board members and define their duties as the chairperson deems necessary to carry out the functions of the board.

E. Board employees, including the executive director, temporary personnel and professional medical investigators, are immune from civil liability for good faith actions they take to enforce this chapter.

F. In performing its duties pursuant to subsection A of this section, the board may receive and review staff reports on complaints, malpractice cases and all investigations.

G. The chairperson and vice chairperson of the Arizona regulatory board of physician assistants are members of the committee on executive director selection and retention established by section 32-1403, subsection G, which is responsible for the appointment of the executive director pursuant to section 32-1405.

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.

F

CONSIDERATION AND DISCUSSION OF PETITION AND RESPONSE RELATED TO DEPARTMENT OF AGRICULTURE RULES IN TITLE 3, CHAPTER 2, ARTICLE 9 REGARDING CAGE-FREE EGGS SUBMITTED PURSUANT TO A.R.S. § 41-1033(G)

GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM - PETITION

MEETING DATE: April 4, 2023

DATE: March 15, 2023

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

FROM: Council Staff

SUBJECT: A.R.S. § 41-1033 (G) Petition To Review Rules Related to Cage Free Eggs in Title 3, Chapter 2, Article 9

BACKGROUND

As described to the Council in a memorandum from Council staff dated February 7, 2023, on December 16, 2022, GRRC staff received a petition (Petition) from Aditya Dynar on behalf of the Pacific Legal Foundation (Petitioner) requesting that the Council review rules in Title 3, Chapter 2, Article 9 (Animal Services Division), a Department of Agriculture (Department) rule, related to cage free eggs under A.R.S. §. 41-1033 (G). A.R.S. § 41-1033(G) states that "[a] person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.." On February 7, 2023, the Council voted that this matter be heard in a public meeting pursuant to A.R.S. § 41-1033(H). GRRC staff received a reply to the Petition from the Department on Friday, March 3, 2023, pursuant to A.R.S. § 41-1033(H)(3).

PROCEDURAL HISTORY

Many of the concerns raised by the Petitioner in the current Petition were previously considered and addressed by the Council at the March 29, 2022 Study Session and April 5, 2022 Council Meeting when the Department's rulemaking was initially considered by the Council.

At the March 29, 2022 Study Session, a representative from the Arizona Farm Bureau raised issues such as the constitutionality of the rule, that the rule exceeds the scope of the Department's authority, that the Department failed to show an actual public benefit to the rule, as well as the argument that the amendments do not fulfill a fulfill a public health, safety, or welfare concern. (*See* https://archive.org/details/3.29.2022-ss at 23:24). In response to these comments, a representative from the United Egg Producers, Chad Gregory, shared why there was so much

support surrounding this rulemaking package. (https://archive.org/details/3.29.2022-ss at 49.20). Mr. Gregory mentioned reasons such as the fact that states are trending towards cage free eggs and there are a number of states that have already passed cage free only laws as well as states that are currently pending these laws; that the egg industry wants this regulation to be passed; that this rulemaking allows the industry to have input on the timelines to which they will be required to be fully cage free and failure to pass this rule will be a burden to stakeholders due to the passage of a ballot initiative. Council staff previously provided this Council with a summary of the discussions at the March 29, 2023 Study Session surrounding the Department's rulemaking.

Having considered these statements, and having analyzed the rulemaking pursuant to the criteria in A.R.S. § 41-1052(D), the Council voted to approve the Department's rulemaking at the April 5, 2022 Council Meeting.

PETITIONER'S ARGUMENT

Petitioner asks this Council to void the 2022 amendments to A.A.C. §§ R3-2-901–R3-2-907, which the Council previously voted to approve, and states "[t]he rule amend[ing] A.A.C. §§ R3-2-901–R3-2-907 to incorporate by reference a private industry code requiring that 'all eggs sold in the state must come from laying hens … housed in a cage-free manner,"..."suffers from four fatal defects listed in A.R.S. § 41-1033(G): (1) The rule is unconstitutional; (2) It is 'not specifically authorized by statute' and 'exceeds the agency's statutory authority'; (3) It does not 'specifically fulfill a public health, safety or welfare concern"' and (4) It "'s unduly burdensome.'" (*see* Petition at 2).

1. The Rule is Unconstitutional

As previously stated in Petitioner's February 8, 2022 comments to the Department on the initial rulemaking, Petitioner again states in its current petition that the "Arizona Supreme Court has severely limited the incorporation by reference practice." *Id*. at 3. Petitioner cites to *Roberts v. State*, 253 Ariz. 259 (2022), and infers that the Court had previously rejected the Department of Administration's attempt to incorporate federal labor laws and apply them to State employees and that the same separation of powers argument applies here. *Id*. Petitioner also states that the rule is unconstitutional under the Dormant Commerce Clause because it applies to all eggs sold in Arizona and would therefore be a burden to out of state egg producers.

2. The Rule is Not Specifically Authorized By Statute and Exceeds Agency's Authority

Similarly, the Petitioner previously took the position in February 8, 2022 comments to the Department on the initial rulemaking, and once again argues in the present petition, that under A.R.S. § 3-107(A)(1) the director of the Department only has generic rulemaking authority, but not specific authority to incorporate an industry standard and that the Department "can prescribe minimum standards for egg processing plants and sanitary standards for processing shell eggs and adopt rules for poultry husbandry and the production of eggs sold in this state." *Id*. at 2. Petitioner goes on to say that the legislature's careful wording precludes reading those sections as

delegating incorporation-by-reference authority and that the legislature could grant specific authority if they wanted to.

3. The Rules Does Not Specifically Fulfill A Public Health, Safety, or Welfare Concern

Petitioner states that the rule does not satisfy A.R.S. § 41-1033(G) as market trends, pressure from consumers and retailers, and hen welfare does not specifically satisfy a public health, safety, and welfare concern. Petitioner also indicates that; (1) the Department has not provided any evidence that the rules are beneficial to public health, safety, and welfare as there is no difference in nutritional value between conventional and cage-free eggs and; (2) the Department has provided no justification that these rules will serve society's well being or provide a beneficial purpose.

4. The Rule Is Unduly Burdensome

Petitioner states that the rule is unduly burdensome because the rule "increase[s] the cost of production" and increases the consumer egg cost, therefore causing the rule to "impose[ ] costs on producers and consumers that are far greater than any purported benefits." *Id*. at 4.

DEPARTMENT'S RESPONSE

The Department asks the Council to deny the Petition and affirm the rules as Petitioner only "rehashes prior arguments this Council considered and soundly rejected after substantial discussion and deliberation." (*see* Response at 1). The Department asks for this resolution as (1) the United Egg Producers (UEP) standards are legally and permissibly incorporated into the rule; (2) the rule serves an important public health and welfare concern; (3) the Department considered the impact of the rule and determined that its benefits outweigh the costs; and (4) the Council is not authorized to determine constitutionality.

1. UEP Standards Are Legally and Permissably Incorporated Into the Rule

The Department states that they first adopted the UEP Animal Husbandry Guidelines as the production standards in Arizona in 2009 as the guidelines are industry-accepted best management practices designed to ensure the safe consumption of eggs and the growing concern for animal welfare. *Id* at 2. They also state that the current rules "merely continues prior directives requiring producers adhere to the 2017 UEP Animal Husbandry Guidelines" which builds on the Department's existing poultry husbandry regulations and regulatory expertise as authorized by A.R.S. § 3-107(1) and A.R.S. § 3-710(J). *Id*.

The Department also states that they are allowed, pursuant to A.R.S. § 41-1028, to incorporate by reference all or part of any code, standard, rule or regulation of a nationally recognized organization or association, if incorporation of its text would be unduly cumbersome. *Id*.at 3.

2. **The Rule Serves An Important Public Health and Welfare Concern**

The Department states that they serve an important public health, welfare, and safety concern as they submitted an economic impact statement to the Council detailing its findings that the decrease in stocking density improves hen welfare and decreasing salmonella rates which improves public perception and safety, and therefore benefits public welfare. *Id*. at 4.

The Department also indicates that the humane treatment of animals is a matter of public importance and that the public's concerns about the welfare of egg laying hens is evidenced by the large number of comments they received supporting the rule. *Id*.

3. **The Regulatory Impact of the Rule Was Considered**

The Department indicates that they have the full support of the regulated community as they received no negative comments from egg producers. *Id*. at 5. The Department also stated that the costs and the benefits of the Rule were considered and it was determined that these benefits to public health and welfare outweighed the marginal increased costs to consumers. *Id*.

4. **The Council Is Not Authorized to Determine Constitutionality**

The Department states that A.R.S. § 41-1033 delineates the scope of a permissible challenge and that the legislature did not authorize Council to adjudicate the constitutionality of a rule that otherwise complied with the requirements of A.R.S. 41-1030. *Id*. at 6. The Department also states that adjudicating the constitutionality of the state action should be reserved for the courts. *Id*. at 7.

PROCEDURE

After considering the petition, Department's response, and the supporting materials submitted, the Council must determine whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is not specifically authorized by statute, exceeds the agency's statutory authority, or is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. *See* A.R.S. § 41-1033(H)(1)(c).

If the Council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority or is not authorized by statute, the practice, policy statement, rule or regulatory licensing requirement shall be void. *See* A.R.S. § 41-1033(K). If the Council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the Council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. *Id.*

Ultimately, any Council decision shall be made by a majority of the Council members who are present and voting on the issue. *See* A.R.S. § 41-1033(L). Pursuant to R1-6-402, no later than seven days after the Council makes a decision on this petition, the Chair shall send a letter to the affected agency head and the person filing the petition advising them of the reasons for, and date of, the decision.

CONCLUSION

The petition is properly before the Council and both parties have submitted materials consistent with the requirements in the statute as indicated above. Council staff advises the Council to consider the materials both parties have submitted and to question both parties as to whether the rules in Title 3, Chapter 2, Article 9 violates A.R.S. § 41-1033(G).

A.R.S. § 41-1033(G) states that "[a] person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern."

The following materials are attached for the Council's consideration:

- Department's April 2022 Notice of Final Rulemaking amending rules R3-2-901 through 907;
- Council staff's summary of the Council's March 29, 2022 Study Session discussion regarding Department's rulemaking;
- A.R.S. § 41-1033 and A.R.S. § 41-1030;
- Council staff memorandum dated January 6, 2023;
- Petition and supporting documents; and
- Department's response and supporting documents.

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: February 7, 2023

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

FROM: Council Staff

DATE: **January 6, 2023**

SUBJECT: **A.R.S. 41-1033(G) Petition Related to Department of Agriculture Rules in Title 3, Chapter 2, Article 9 Regarding Cage-Free Eggs**

Summary

On December 16, 2022, Council staff received a petition (Petition) from Aditya Dynar on behalf of the Pacific Legal Foundation (PLF). PLF raises several issues with the rulemaking approved by Council on April 5, 2022 related to the amendments made by the Department of Agriculture in Title 3, Chapter 2, Article 9 (Animal Services Division)[1] and states that the rule should be void under A.R.S. § 41-1033(K). Specifically, petitioner states "The rule amend[ing] A.A.C. §§ R3-2-901–R3-2-907 to incorporate by reference a private industry code requiring that 'all eggs sold in the state must come from laying hens…housed in a cage-free manner,'" "suffers from four fatal defects listed in A.R.S. § 41-1033(G): (1) The rule is unconstitutional; (2) It is 'not specifically authorized by statute' and 'exceeds the agency's statutory authority'; (3) It does not 'specifically fulfill a public health, safety or welfare concern'; and (4) It 'is unduly burdensome.'" (*See* Petition at 2).

Relevant Statutes

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the

[1] Although this rulemaking addressed amendments to five rules in the Article, petitioner has not stated with specificity which rule she is seeking to void, only that it is related to "cage-free eggs."

agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section."

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

   See A.R.S. § 41-1033(H).

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, the petition lacks specificity as the Petition fails to identify which specific rule and/or subsection should be "void" and only cites the Notice of Final Rulemaking from the Arizona Administrative Register. Second, the concerns raised in the Petition were previously considered and addressed at the March 29, 2022 study session and April 5, 2022 council meeting. At the March 29, 2022 Study Session, a representative from the Arizona Farm Bureau mentioned issues such as whether the Department had the authority to make rules that could impact out of state egg producers and the Commerce Clause as well as the argument that

the amendments do not fulfill a fulfills a public health, safety, or welfare concern. (*See* https://archive.org/details/3.29.2022-ss at 23:24). In response to these comments, a representative from the United Egg Producers, Chad Gregory, shared why there was so much support surrounding this rulemaking package. (https://archive.org/details/3.29.2022-ss at 49.20). He mentioned reasons such as which states have already passed cage free only laws and which states are currently pending these laws; the fact that the industry is trending towards cage free; and that this rulemaking allows the industry to have input on the timelines to which they will be required to be fully cage free.

Because PLF is asking that the Council reconsider their vote from the April 5, 2022 Council Meeting and because the petition lacks specificity, as previously mentioned, it is Council staff's recommendation that the Council does not request that this petition be heard at a future Council Meeting.

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Arizona Governor's Regulatory Review Council

In the Matter of: **A.R.S. § 41-1033(G) Petition to Review a Final Rule Relating to Cage-Free Eggs** Petitioner: **Pacific Legal Foundation** Respondent: **Arizona Department of Agriculture**	GRRC File No. _____ **PETITION TO REVIEW A FINAL RULE**

Pacific Legal Foundation (PLF) respectfully petitions the Governor's Regulatory Review Council (GRRC) under A.R.S. § 41-1033(G) to repeal a final rule of the Department of Agriculture (AZDA) relating to cage-free eggs. The AZDA cage-free-egg rule became final on October 1, 2022. 28 A.A.R. 802 (Apr. 22, 2022). GRRC should declare the rule "void" under A.R.S. § 41-1033(K).

The rule amended A.A.C. §§ R3-2-901–R3-2-907 to incorporate by reference a private industry code requiring that "all eggs sold in the state must come from laying hens … housed in a cage-free manner." 28 A.A.R. 803. The rule suffers from four fatal defects listed in A.R.S. § 41-1033(G): (1) The rule is unconstitutional; (2) It is "not specifically authorized by statute" and "exceeds the agency's statutory authority"; (3) It does not "specifically fulfill a public health, safety or welfare concern"; and (4) It "is unduly burdensome." Therefore, the rule should be "void[ed]." A.R.S. § 41-1033(K).

I. The Cage-Free-Egg Rule Is Not Specifically Authorized by Statute

AZDA claims authority to incorporate by reference a private industry standard written by "United Egg Producers" (UEP). 28 A.A.R. 802. AZDA claims authority to do so under A.R.S. §§ 3-107, 3-710. However, neither section delegates to AZDA the "specifi[c] authori[ty]," A.R.S. § 41-1033(G), to incorporate by reference a private industry standard.

Section 3-107 gives the AZDA director only generic rulemaking authority to "adopt administrative rules to effect its program and policies." A.R.S. § 3-107(A)(1). And Section 3-710 says AZDA can "prescribe minimum standards for egg processing plants and sanitary standards for processing shell eggs," and "adopt rules for poultry husbandry and the production of eggs sold in this state." A.R.S. §§ 3-710(I), (J). The legislature's careful wording precludes reading those sections as delegating incorporation-by-reference authority to AZDA. A comparison is helpful. A.R.S. § 3-2046(B), for example, gives AZDA the specific authority to "incorporate by reference existing federal meat inspection regulations." The legislature knows how to grant specific authority when it wants to. There is no *specific authority* in A.R.S. §§ 3-107, 3-710 for AZDA to incorporate the UEP cage-free-egg standard. Incorporating by reference the UEP standard, therefore, is "not specifically authorized by statute" and it "exceeds AZDA's statutory authority." A.R.S. § 41-1033(G).

II. The Cage-Free-Egg Rule Is Unconstitutional

The Arizona Supreme Court has severely limited the incorporation-by-reference practice. *Roberts v. State*, 253 Ariz. 259 (2022). In *Roberts* the Arizona Department of Administration had incorporated by reference portions of federal labor law and applied it to state employees. The Court rejected such incorporation by reference because it violated the Arizona Constitution's separation of powers. Ariz. Const. art. 3. And mere legislative silence, the Court explained, cannot impliedly delegate incorporation-by-reference authority to state agencies. *Id.* at ¶36. *See also A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (striking down as violating the nondelegation doctrine a federal statute that enabled the President to adopt a private industry code for the poultry industry). AZDA's cage-free-egg rule suffers from the same defect.

The rule is also unconstitutional under the dormant Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because it applies to "*all* eggs sold" in Arizona. 28 A.A.R. 803 (emphasis added). That is, it burdens out-of-state egg producers' sale of eggs in Arizona. Such a burden on interstate commerce is unconstitutional. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (striking down AZDA's cantaloupe packaging regulation as unconstitutional under the dormant Commerce Clause). So too here. AZDA's cage-free-egg rule should therefore be voided. A.R.S. § 41-1033(K).

III. The Rule Does Not Specifically Fulfill a Public Health, Safety, or Welfare Concern

Even if GRRC were to conclude that there is specific statutory authority and that the incorporation by reference is not unconstitutional, GRRC must still evaluate whether the cage-free-egg rule *specifically* fulfills a public health, safety, or welfare concern. A.R.S. § 41-1033(G). It does not. Thus, while AZDA cited "market trends" and "pressure from consumers and retailers" regarding "hen welfare," 28 A.A.R. 803, it failed to "demonstrat[e]" that the rule is "necessary to specifically fulfill a public health, safety or welfare concern." A.R.S. § 41-1033(G).

"Public health" means the "health of the community at large." *Black's Law Dictionary* 865 (Deluxe 11th ed.). AZDA supplied no evidence of any discernible or beneficial impact on the health of the community. On the contrary, there appears to be no difference in nutritional value between conventional and cage-free eggs. *Compassion Over Killing v. FDA*, 849 F.3d 849, 853 (9th Cir. 2017)

(citing FDA's observation that there is no "persuasive evidence that eggs from caged hens are … less nutritious … than eggs from uncaged hens").

"Public safety" means the "welfare and protection of the *general* public." *Black's Law Dictionary* at 1488 (emphasis added). And "public welfare" means a "society's well-being in matters of health, safety, order, morality, economics, and politics." *Id.* at 1910. Promoting the public's health, safety, or welfare must "serv[e] a beneficial public purpose." *City of Phoenix v. Collins*, 22 Ariz. App. 145, 148 (1974). AZDA supplied *no* evidence that the cage-free-egg rule promotes the *general public*'s safety or welfare at all. As noted, AZDA specifically justifies the rule based on market trends and hen welfare. *Neither* justification pertains to the *public*'s safety or welfare.

IV. The Rule Is Unduly Burdensome

Finally, because the rule imposes costs on producers and consumers that are far greater than any purported benefits to them, the rule is also "unduly burdensome" within the meaning of A.R.S. § 41-1033(G).

AZDA admits that the rule "will increase the costs of production." 28 A.A.R. 804. Labor costs "could increase as much as 41%." *Id.* It "will [also] increase producer's capital expenditures and the costs of facilities and equipment." *Id.* AZDA admitted that one in-state producer will have to spend "hundreds of millions of dollars into converting its existing production facilities to cage-free." *Id.* On the consumer side, AZDA said that the rule "will increase consumer egg costs." *Id.* These burdens far outweigh any purported benefits of the rule. GRRC should therefore declare the rule void.

Conclusion

GRRC should declare void the 2022 amendments to A.A.C. §§ R3-2-901–R3-2-907.

Respectfully submitted, on December 15, 2022.

/s/ Aditya Dynar
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ARIZONA GOVERNOR'S REGULATORY REVIEW COUNCIL

In re: Pacific Legal Foundation's Petition to Review a Final Rule **Petitioner**: Pacific Legal Foundation **Respondent**: Arizona Department of Agriculture	GRRC File No. _____ **RESPONDENT'S RESPONSE TO PETITION TO REVIEW A FINAL RULE**

Respondent, the Arizona Department of Agriculture (the "Department"), submits the following for its response to Petitioner Pacific Legal Foundation's A.R.S. §41-1033(G) Petition To Review a Final Rule ("Petition"):

1. INTRODUCTION

Attempting to seize upon rising retail egg prices caused by an avian influenza outbreak, PLF filed its Petition asking this Council to invalidate a rule it unanimously approved only eight months earlier. See Notice of Final Rulemaking, Vol. 28, Issue 22, A.A.R., at pg. 803 (the "Rule"). Its Petition only rehashes prior arguments this Council considered and soundly rejected after substantial discussion and deliberation. PLF's arguments are equally meritless today. For the reasons detailed below, the Council should deny the Petition and affirm the Rule.

2. ARGUMENT

A. The Rule legally and permissibly incorporates the UEP husbandry standards.

For its first argument, PLF ironically claims the Council must repeal the Rule, and reinstate its predecessor, because the Department exceeded its authority by incorporating the United Egg Producer's United Egg Producers ("UEP") Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition. (Petition, at 2.) The argument is ironic because the Rule's predecessor also incorporates UEP animal husbandry guidelines. So PLF is asking the Council to repeal the Rule and reinstate a prior version that would, in its view, exceed the Department's authority. Notwithstanding the irony, PLF's argument authority is wholly unfounded. As Hickman's Egg Ranch, Inc. noted in its comment to the Council last February, "[t]he Proposed Rulemaking only

builds on the Department's existing poultry husbandry regulations and regulatory expertise and . . . is authorized pursuant to A.R.S. § 3-107(1) ("The Director shall . . . [f]ormulate the program and policies of the department and adopt administrative rules to effect its program and policies"), and A.R.S. § 3-710(J) ("The director shall adopt rules for poultry husbandry and the production of eggs sold in this state.")."

Again, the Department first adopted the United Egg Producers (UEP) Animal Husbandry Guidelines as the production standards in Arizona in 2009. *See* Notice of Final Rulemaking, Vol. 15, Issue 22 A.A.R., Pg. 863, May 29, 2009 (the "2009 Rulemaking"). The guidelines are industry-accepted best management practices designed to ensure the safe consumption of eggs and the growing concern for animal welfare. *Id*. The current Rule merely continues prior directives requiring producers adhere to the 2017 UEP Animal Husbandry Guidelines. It increases the floor space per layer until January 1, 2025, when all laying hens in the state must be "housed in a cage free manner," as that term is defined in the Rule. *See* Rule, at pg. 803. In other words, the Rule largely phases out the UEP Animal Husbandry Guidelines.

A.R.S. § 41-1028 also empowers the Department, to "incorporate by reference in its rules . . . all or any part of a code, standard, rule or regulation of . . . a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome." As the Department explained in the 2009 Rulemaking:

> *The Department responds that it has not delegated its rulemaking authority to UEP. The Department is adopting the [2017] Edition of the UEP Guidelines that were already in existence when the rulemaking began. Subsequent changes to the UEP Guidelines will not become part of the Department's regulations unless the Department chooses to undertake a separate, future rulemaking to effect those changes. A.R.S. § 41-1028(E). Further, the Department has the discretion to decide (and did decide) that the UEP Guidelines are appropriate to adopt into Arizona law and is not required, as has been implied, to set unique standards.*

See 2009 Rulemaking, at pg. 867. The same analysis applies to the Rule with equal fervor. The Department can, and did, appropriately incorporate the UEP Animal Husbandry Guidelines.

B. The Rule serves important public health and welfare concerns.

PLF's primary argument is that the Rule "does not 'specifically fulfill a public health, safety or welfare concern….'" (Petition at 2.) PLF first raised this argument in the public comments it submitted to the Department during the Rulemaking, urging this Department to forego the Rule. The

Arizona Farm Bureau echoed these arguments directly to GRRC in the Opposition that Phillip Bashaw submitted on March 25, 2022 (the "Opposition"). A copy of that Opposition, which actually incorporates PLF's comments, is attached as Exhibit A. *See* Exhibit __, at p.2, n.1. Thus, the Council already considered and rejected this argument.

More importantly, however, the Rule does fulfills public health, safety and welfare concerns. As PLF concedes, "'public health' means the 'health of the community at large.'" (Petition, at 3 (citing *Black's Law Dictionary* 865 (Deluxe 11th ed.))). "'Public safety' means the 'welfare and protection of the general public.'" *Id*. "And "'public welfare' means a 'society's well-being in matters of health, safety, order, morality, economics, and politics.'" *Id*.

The Department submitted an Economic Impact Statement to the Council detailing its finding on the Rule's potential economic impact. As the Department explained under the heading "The harm resulting from the conduct the Rule is designed to change":

While increased pressure from consumers and retailers are the primary drivers of this change, "[t]he scientific evidence clearly favors the notion that hen well-being is higher in cage-free production systems than in the typical cage system . . . ." The net effect of this Rulemaking is to decrease stocking densities and improve hen welfare by enabling them to exhibit their natural behaviors. Even if the welfare benefit to the hens is more an incident of public perception, it still [a] benefit for the public welfare. And reducing stocking densities has been shown to decrease salmonella rates in layers, another benefit to consumers.

Economic Impact Statement, at 1 (internal footnotes omitted).

PLF also claims the Rule does not fulfill any public health or safety concerns because "there appears to be no difference in nutritional value between conventional and cage-free eggs." (Petition, at 3.) This red herring conflates food quality and food safety. There is credible scientific evidence establishing increasing floor space requirements and decreasing bird densities reduces the incidence of salmonella. One study even concluded that hens confined in cages had higher salmonella rates for all salmonella serotypes.[1] Reducing salmonella rates undoubtedly serves both public health and safety.

Additionally, PLF refuses to acknowledge the Rule's contribution to the welfare of laying hens. Animal welfare is certainly a matter of public importance. *See, e.g.*, 7 U.S.C. § 2131 ("The

1 European Food Safety Authority. 2007. Report of the Task Force on Zoonoses Data Collection on the Analysis of the baseline study on the prevalence of Salmonella in holdings of laying hen flocks of Gallus gallus. The EFSA Journal 97. Available at https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2007.97r. Last accessed February 14, 2022.

Congress finds that . . . regulation of animals and activities as provided in this Act [7 USCS §§ 2131 et seq.] is necessary . . . to assure the humane treatment of animals during transportation in commerce…."); *see also* A.R.S. § 3-710(K) (providing that regulation of poultry husbandry practices is a matter of statewide importance); A.R.S. § 13-2910(A)(1) (criminalizing as animal cruelty knowingly or recklessly subjecting an animal to cruel neglect). Accordingly, the public's concerns about the welfare of egg laying hens, ***evidenced by the 1659 comments supporting the Rule***, including support from egg producers, United Egg Producers, Arizona's biggest dairy coop, and the Cattle Feeders' association. There is no doubt this is a matter of public welfare.

C. The Department properly considered the regulatory impact of the rule and determined that its benefits outweigh the costs.

Selectively quoting snippets from the Rule, PLF claims the Rule is "unduly burdensome." PLF, the Arizona Farm Bureau, and the Goldwater Institute all raised these same arguments in the comments they submitted during the rulemaking. Importantly, none of these commenters provided any economic data, beyond anecdotal situations, evidencing this "unreasonable burden." PLF's Petition provides no further evidence or compelling discussion than before.

To the extent PLF claims the Rule is unduly burdensome because it increases costs for egg producers (Petition, at 4), that argument is belied by egg producers' overwhelming support for the Rule. The Department did not receive any negative comments from egg producers. If the regulated industry does not view the Rule as unduly burdensome, neither the Department nor this Council should have occasion to decide otherwise.

PLF also argues that the Rule is unduly burdensome because it will increase consumer egg costs." (Petition, at 4.) Again, PLF's Petition provides no further evidence or discussion regarding this undue impact or burden. The Department already considered the costs and the benefits of the Rule, which are described throughout this response, and determined that these benefits to public health and welfare outweighed the marginal increased costs to consumers. The consumers agreed: submitting 1659 comments supporting the Rule, versus 114 comments in opposition.

This Council should not attempt to substitute their personal opinions for the prior rational and well-reasoned decisions of prior members of the Council. The Council previously and properly agreed with the Department and, thus, should deny the Petition.

D. The Council is not authorized to determine constitutionality.

A.R.S. § 41-1033(F) enables persons to petition the Council to "request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030." "A person may [also] petition the council to request a review of an existing . . . final rule . . . that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." A.R.S. 41-1033(G). Under 41-1030, a "rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute, and is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law." Moreover, 41-1030(D) states that an angency shall not:

1. Make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.
2. Make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority.
3. Make a rule that is not specifically authorized by statute.

These provisions delineate the scope of a permissible challenge filed under A.R.S. § 41-1033.

Nowhere in the statutory provisions cited above does the legislature authorize this Council to adjudicate the constitutionality of a rule that otherwise complied with the requirements of A.R.S. 41-1030. Especially since the Council's action is not subject to further review. A.R.S. § 41-1033(M). Importantly, section 1034 does authorize persons to seek declaratory relief in the courts. A.R.S. § 41-1033(M). It cannot be disputed that adjudicating the constitutionality of state action is best reserved to the courts.

If the Council determines that it does have the statutory ability to determine constitutionality, however, the Ninth Circuit Court of Appeals previously rejected similar dormant commerce clause arguments against California's Proposition 12. See *Nat'l Pork Producers Council v. Ross*, 6 F.4th 1021, 1031-32 (9th Cir. 2021) (holding that Proposition 12 did not impermissibly burden interstate commerce).Unless and until the Supreme Court rules in this case, the Rule is constitutional.

NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency.

Economic Impact Statements are not published but are filed by the agency with their final notice.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to item #5 to contact the person charged with the rulemaking.

The codified version of these rules will be published in the *Arizona Administrative Code*.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

[R22-62]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R3-2-901	Amend
R3-2-903	Amend
R3-2-905	Amend
R3-2-906	Amend
R3-2-907	Amend

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

Authorizing statute: A.R.S. § 3-107
Implementing statute: A.R.S. § 3-710

3. The effective date of the rule:

October 1, 2022

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):

The effective date is October 1, 2022 to allow sufficient time for companies to comply with the rule.

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. 123, January 7, 2022
Notice of Proposed Rulemaking: 28 A.A.R. 5, January 7, 2022

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

Name: Roland Mader
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-0884
Fax: (602) 542-4194
Email: rmader@azda.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:

Arizona Revised Statutes § 3-710(J) gives the Arizona Department of Agriculture (the "Department") the express authority to regulate "poultry husbandry" for eggs produced and sold in Arizona. *See* A.R.S. § 3-710(J). "Poultry husbandry" includes the facility systems and spacing requirements. The Department previously adopted the United Egg Producers (UEP) Animal Husbandry Guidelines as the production standards in Arizona. *See* Notice of Final Rulemaking, Vol. 15, Issue 22 A.A.R., Pg. 863, May 29, 2009. The amendments establish updated poultry husbandry standards, including increased minimum floor space requirements for

laying hens reducing stocking densities. Additionally, and in light of the public's growing concerns about animal welfare, including the hens' ability to move freely and express their natural behaviors, the amendments establish a transition from traditional caged production methods to cage-free production.

Under the proposed amendments, all caged egg-laying hens in the state shall be required to be raised according to the United Egg Producers ("UEP") Animal Husbandry Guidelines until September 30, 2022. From October 1, 2022, until December 31, 2024, all eggs sold in the state must come from laying hens raised according to the UEP Animal Husbandry Guidelines and housed in a cage with at least one square foot of usable floor space per laying hen. From January 1, 2025, forward, all laying hens in the state must be housed in a cage-free manner, and all eggs sold in the state must come from hens housed in a cage-free manner. An exemption would be made for egg producers whose operation has fewer than 20,000 egg-producing hens. The amendments are intended to represent the best management practices in the shell egg industry that ensure the production of high-quality, cruelty-free eggs. The amendments also reflect market trends, which producers anticipate will shift to cage-free eggs by 2025. The Department crafted this regulation to minimize its regulatory burden. The rule anticipates using specific certifications to ensure that out- of state producers have no additional burden or advantage over in-state producers.

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:

A. Augustine, C. and Peterson S., "An Assessment of the Economic Impacts of the Prevention of Farm Animal Cruelty Act." (January 31, 2016) (Available at: https://www.humanesociety.org/sites/default/files/docs/2016-cl-white-paper-cfap.pdf>).

B. Brannan, K.E. and Anderson, K.E., "Examination of the impact of range, cage-free, modified systems, and conventional cage environments on the labor inputs committed to bird care for three brown egg layer strains." Journal of Applied Poultry Research, Volume 30, Issue 1 (2021).

C. Bell, D.(2006). A Review of Recent Publications on Animal Welfare Issues for Table Egg Laying Hens. University of California, Riverside.

D. Carman, H, (2012). "Economic Aspects of Alternative California Egg Production Systems." Paper prepared for The Association of California Egg Farmers, August 30, 2012.

E. Carter, CA, Schaefer, KA, and Scheitrum, D, (2020). "Piecemeal Farm Regulation and the U.S. Commerce Clause." American Journal of Agricultural Economics, Vol. 103(3), pp 1141–1163.

F. Chang, Jae Bong, et al. (2010). "The Price of Happy Hens: A Hedonic Analysis of Retail Egg Prices." *Journal of Agricultural and Resource Economics*, vol. 35, no. 3, Western Agricultural Economics Association, 2010, pp. 406–23, http://www.jstor.org/stable/23243063.

G. Clements, Mark (2022). "The World's Top 10 Egg Producers." WATTPoultry International, Volume 61, Number 2, page 5 (available at https://www.poultryinternationaldigital.com/poultryinternational/february_2022/MobilePagedReplica.action?pm=2&folio=4#pg8).

H. Declaration Of Devrim Ikizler.

I. European Food Safety Authority. 2007. Report of the Task Force on Zoonoses Data Collection on the Analysis of the baseline study on the prevalence of Salmonella in holdings of laying hen flocks of Gallus gallus. The EFSA Journal 97. Available at https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2007.97r. Last accessed February 14, 2022.

J. Geng, A. L., Liu, H. G., Zhang, Y., Zhang, J., Wang, H. H., Chu, Q., & Yan, Z. X. (2020). Effects of indoor stocking density on performance, egg quality, and welfare status of a native chicken during 22 to 38 weeks. Poultry Science, 99(1),163-171.

K. Matthews, WA., and Sumner, DA, (2015). "Effects of Housing System on the Costs of Commercial Egg Production." Poultry Science Volume 94, Number 3 (2015): 552-557.

L. O'Keefe, Terrence (2021). "Ranking the largest US egg-producing companies in 2021." Egg Industry, Volume 126, Number 1, page 6 (available at https://www.eggindustrydigital.com/eggindustry/january_2021/MobilePagedReplica.action?utm_source=Omeda&utm_medium=Email&utm_content=DE-Egg+Industry&utm_campaign=DE Egg+Industry_20210129_1300&oly_enc_id=4891F5381367F2Y&pm=2&folio=8#pg10.)

M. O'Keefe, T, (2019). "US Consumers Not Sold on Cage-Free Eggs." WattPoultry.com. (available at https://www.wattagnet.com/blogs/14-food-safety-and-processing-perspective/post/38931-us-consumers-not-sold-on-cage-free-eggs).

N. Siedman Research Institute. Economic Insights on the Move to Cage Free Egg Production in Arizona (February 7, 2022).

O. Summary Research Results, Coalition for Sustainable Egg Supply, accessed February 2, 2022, from https://www2.sustainableeggcoalition.org/document_center/download/final-results/SummaryResearchResultsReport.pdf ("Physiological data did not demonstrate the presence of acute or chronic stress in any housing system.").

P. Sumner, DA, et al., (2011). "Economic and Market Issues on the Sustainability of Egg Production in the United States: Analysis of Alternative Production Systems." Poultry Science Volume 90, Number 1 (2011): 241-250.

Q. Sumner, D. A., J. T. Rosen-Molina, W. A. Matthews, J. A. Mench, and K. R. Richter. "Economic Effects of Proposed Restrictions on Egg-Laying Hen Housing in California." University of California Agricultural Issues Center Report, July 2008.

R. USDA World Agricultural Supply and Demand Estimates (WASDE) available at < https://www.usda.gov/oce/commodity/wasde>.

S. Vanhonacker, F. and Verbeke, W. (2009) "Buying higher welfare poultry products? Profiling Flemish consumers who do and do not."Poultry Science, 88(12): 2702-2711.

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:

The rulemaking does not diminish any previous authority of a political subdivision of this state.

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

Over the past decade, alternative production systems have increased in the commercial table egg industry. Increased pressure from consumers and retailers concerned about the welfare of the laying hens in caged housing environments, including the inability to move around and express natural behaviors, are the primary drivers of this change. These animal welfare concerns have prompted most food retailers and restaurants to pledge that, by 2025, they will only purchase and sell cage-free eggs. Similarly, surrounding states, including California, Utah, Colorado, Nevada, Oregon, and Washington, have passed legislation requiring that all eggs pro-

duced or sold in their states come from chickens raised using cage-free production methods in the next 1-5 years.

Interest groups also filed a ballot initiative in Arizona, Ballot Initiative I-01-2022 (the "Initiative"), requiring (among other things) that all eggs produced or sold in Arizona after May 1, 2023, come from hens housed in cage-free production environments. Given the success of recent animal welfare ballot initiatives in Arizona and elsewhere, this Initiative presents a probably regulatory alternative. Thus, when deciding whether to pursue the rulemaking, the Department considered – among the many other relevant factors – the Initiative's potential economic effects on the state.

The transition to cage-free housing will increase the costs of production as compared to conventional caged production systems. Labor inputs, which comprise about five to seven percent of the costs of egg production, could increase as much as 41%. The economic studies forecast that the cost differential between cage free and conventional production is somewhere between $.01 per egg, to just over $.02 per egg. Experts also forecast that the cage free conversion will result in a long-run wholesale price increase of $.39 per dozen, or $.0325 per egg. Thus, producers can expect to recoup some of their costs through increased wholesale prices to retailers, etc. Retailers will likely pass some of the increased costs to consumers.

The transition to cage-free will increase producer's capital expenditures and the costs of facilities and equipment. One in-state producer estimates that it will have to invest hundreds of millions of dollars into converting its existing production facilities to cage-free. These construction activities will create jobs and benefit the local economy. Importantly, because the transition from conventional caged egg production to cage-free production requires the investment of significant capital, to minimize the burden on small businesses, the Department excluded from the rulemaking all operations that house under 20,000 laying hens. Therefore, the proposed rulemaking will have little, if any, impact on small businesses within Arizona.

The Department estimates that the rulemaking will increase consumer egg costs between $2.71 and $8.79 per-person, per year. According to USDA WASDE data, the average yearly egg consumption for the years 2010-2021 is 270.675 eggs per year per person. If the average person eats 270.675 eggs per year, and the increased costs of cage-free eggs are between 1 and 3.25 cents per egg, then the estimated annual economic impact per consumer is between $2.71 and $8.79 per year. Economists further predict that the Rulemaking will reduce consumer surplus by $4.81 to $11.05 per Arizona household (2.2 persons), per year. Considering that the average U.S. consumer spent $7,316.00 on food per year in 2019-2020, that is less than a one-tenth of a percent increase in the costs of their overall food expenditures.

Recent economic reports also indicate that eggs at retail outlets are currently trending 29% higher than the previous year. This suggests that retailers and brokers have a greater impact on the cost of eggs to consumers than the actual costs of producing the eggs. It further suggests that retailers may be able to absorb some of the costs to maintain demand. Thus, the transition from conventional to cage-free egg production will have little effect on Arizona consumers.

Another important difference between the proposed rulemaking and the Initiative is timing. Forcing Arizona to transition to cage-free eggs by May 1, 2023, creates significant concerns about the adequacy of the cage-free egg supply. For example, Hickman's Egg Ranch informs the Department that it cannot convert the remainder of its production facilities to cage-free housing by May 31, 2023, as required by the Initiative, and may have to euthanize a portion of its flock to avoid criminal penalties if the Initiative passes. Moreover, as noted above, other states that are "net importers" of shell eggs are converting to cage free in the next three to four years, and Arizona will be competing with consumers from those states. Accordingly, the Department believes it is important to work with producers and give them sufficient time to convert their production and meet the consumer demands for cage-free eggs. The proposed rulemaking gives egg producers additional time to convert their operations to cage-free production.

As compared to the Initiative, the rulemaking's regulatory scheme will significantly reduce the Department's regulatory costs. The Initiative charges the Department with enforcing cage-free requirements but precludes the use of any third-party inspection processes. Thus, the Department would need to send inspectors to inspect producers outside Arizona, requiring the Department to hire additional egg inspectors and significantly increasing inspection costs. On the other hand, the rulemaking enables the Department to rely on third party certifications, including USDA certifications, to ensure producers are compliant. This will modestly increase inspection costs for producers, but will reduce the Department's regulatory burden.

On balance, the Department believes the benefits to public and animal welfare, outweigh the potential economic costs of the rule. The increased costs per consumer represent a small portion of their food budget. Moreover, there is a distinct possibility that voters could pass an initiative either through customer demands or the Initiative, the costs to the producers and the public are driven by the market, not by the regulatory process. The proposed rulemaking gives producers the certainty and time to plan for and execute the transition at less cost. There are no less intrusive or less costly methods of achieving the rulemaking's objectives, and its benefits to Arizona agriculture outweigh any costs.

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

The Department made three substantive changes to the text of the rule published in the Notice of Proposed Rulemaking. All of the changes are minor and the final rule is not substantially different from the proposed rule contained in the Notice of Proposed Rule Making. The changes are:

A. Based on the feedback from the public comments the Department has modified R3-2-901 to include a definition for egg products to clarify what is covered by this rule. The definition clarifies that the rule does not apply to cooked eggs.

B. R3-2-907(A) and (B) was modified to cover an unintended gap in dates changed from June 30 to September 30, 2022.

C. The Department modified R3-2-907(H) to allow egg producers more flexibility in evidencing compliance with the rule by allowing alternative language for labeling. The Department believes this small change alleviates some of the burden placed on producers without resulting in greater or additional penalties for violation.

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

The Department received over 1,700 written comments and fourteen oral comments regarding this rulemaking. The comment in favor outweigh the comment opposing the rulemaking greatly. We received 114 comments opposing and 1659 comments in favor of this rulemaking, for any one comment against the rulemaking we received over 16 comment in favor of the rulemaking. Due to the large number of comments, the Department has chosen to categorize and group identical and similar comments for response.

Neutral comments with suggestions to the text of the rule:

The Department received two oral comments from distributors. Both companies were commenting with the identical two concerns. Both distributors asked for clarification for a further definition for egg products to get a clear understanding of what the rule covers. The second concern from both companies addressed the labeling requirement, they would like more flexibility in labeling of eggs and egg products and for the rule to allow alternate labeling options.

Agency Response: Both concerns were addressed and additional text was added to the rule as described in item 10.

Comments Supporting the Rulemaking:

The Department received an overwhelming support from several egg producers, egg association and supplier companies as well as other Arizona agricultural operations, Arizona's biggest dairy coop, and Cattle association. The Department also received support from Senators that express support and approval of your Proposed Rulemaking for R3-2-907. These regulatory amendments, which build on the Department's existing regulations regarding the poultry husbandry requirements for eggs produced and sold in Arizona, provide an orderly transition from conventional to cage-free egg production for all eggs produced or sold in Arizona. This regulation ensures an adequate and affordable supply of shell eggs and egg products for Arizona consumers into the foreseeable future. The Department received comments from individuals and animal rights groups In support of this rulemaking. The comments addressed, the support for animal welfare and the relative small cost for the producers. The benefit of this rule outweigh the cost to the public and the producers.

Agency Response: The Department appreciates the support given by these companies, organizations, and individuals and agrees that prescribing guidelines for eggs produced and sold in the state takes steps to ensure the welfare of egg-laying hens and ensures that local producers are competitive in the marketplace as well.

Comments Opposing the Rulemaking:

The prevailing sentiment in comments of opposition is statutory. Let the market decide.

Comments were received that the Department doesn't have the authority to promulgate rules for animal husbandry standards. One comment by an animal right group stated the exemptions for producers with less than twenty thousand hens are too broad and the rule should not exempt those producers. Statute exempts producers with less than twenty thousand hens.

One organization raised the concern about the availability of eggs in the state when this rule would be in effect.

Agency Response:

The Department has a brought responsibility to set and implement animal husbandry standards A.R.S. 3-710J. The director shall adopt rules for poultry husbandry and the production of eggs sold in this state.

This rule ensures that enough time is provided to producers to make changes to their operations and to convert to cage free production.

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:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was conducted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

The rule incorporates the following standards:

A. "United Egg Producers Animal Husbandry Guidelines" means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition, defined in R3-2-901, and referred to in R3-2-907.

B. The 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing, referred to in R3-2-907.

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 rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

Section
R3-2-901. Definitions
R3-2-903. Sampling: Schedule and Methods for Evidence
R3-2-905. Inspection Fee Rate
R3-2-906. Violations and Penalties
R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

R3-2-901. Definitions and Interpretation Guidance

A. In addition to the definitions provided in A.R.S. §§ 3-701, 3-703 and 3-704, the following shall apply to this Article:

1. "Business owner or operator" means any person who owns ten percent or more of a business, or a person who controls the operations of a business.
2. "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."
3. "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.
4. "Egg-laying hen" means any hen that produces eggs for human consumption.
5. "Egg products":
   a. Means eggs, in raw or pasteurized form, that are removed from the shell in a liquid, frozen, dried, or freeze-dried state, but are not fully cooked.
   b. May consist of whole eggs, yolks, whites, or any blend of yolk and white, with or without additives, if eggs are the main ingredient.
6. "Housed in a cage-free manner" means confined in a housing system that provides egg-laying hens with all of the following:
   a. The amount of usable floor space per egg-laying hen equal to or greater than that required by the 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing.
   b. An indoor or outdoor controlled environment, which can consist of multi-tiered aviaries, partially-slatted systems, single-level all litter floor systems, or other systems, and which allows egg-laying hens to have:
      i. unrestricted freedom to roam;
      ii. an environment that allows them to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas; and
      iii. an environment in which farm employees can provide care while standing within the hens' usable floor space.
7. "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.
8. "Lot" means any quantity of two or more eggs.
9. "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.
10. "Multi-tiered aviaries" means cage-free housing systems in which egg-laying hens have unfettered access to multiple elevated flat platforms that provide the egg-laying hens with usable floor space both on top of and underneath the platforms.
11. "Partially-slatted systems" means cage-free housing systems in which egg-laying hens have unfettered access to elevated flat platforms under which manure drops through the flooring to a pit or litter removal belt below.
12. "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.
13. "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.
14. "Single-level all-litter floor systems" means cage-free housing systems bedded with litter, in which egg-laying hens have limited or no access to elevated flat platforms.
15. "Spot-check" sample means any sample less than a representative sample described in the chart in R3-2-903(B).
16. "Ultimate consumer" means a person consuming eggs or egg products and a restaurant using eggs in the preparation of a meal.
17. "Usable floor space" means the total square footage of floor space provided to each egg-laying hen, as calculated by dividing the total square footage of floor space provided to the egg-laying hens in an enclosure by the number of egg-laying hens in that enclosure. "Usable floor space" shall include both ground space and elevated level flat platforms upon which hens can roost, but shall not include perches or ramps.
18. "UEP" means United Egg Producers.
19. "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.

20. "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.
21. "United Egg Producers Certified logo" means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.
22. "United Egg Producers Cage Free Certified logo" means the official symbol and accompanying language used to identify cage-free eggs produced by United Egg Producers Certified companies.

B. Wherever appropriate, and if not expressly indicated, words in the singular form shall be construed to include the plural and vice versa. Nouns and pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.

C. Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.

D. The word "includes" and its derivatives means "includes, but is not limited to" and corresponding derivative expressions.

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.

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).

C. For scheduled continuous grading, certification, and inspection services. 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

D. For plant survey, unscheduled temporary, certification, 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

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~~ as required 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
   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.

R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

A. Until September 30, 2022, ~~All~~ all egg-laying hens in this state shall be raised according to ~~United Egg Producers~~UEP Animal Husbandry Guidelines.

B. Until September 30, 2022, ~~All~~ all eggs sold in this state produced by hens shall be from hens raised according to the ~~United Egg Producers~~UEP Animal Husbandry Guidelines. All eggs shall display the ~~United Egg Producers~~UEP 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. Beginning October 1, 2022, all egg-laying hens in this state shall be housed in accordance with the UEP Animal Husbandry Guidelines and shall be provided with no less than one square foot of usable floor space per egg-laying hen.

D. Beginning October 1, 2022, all eggs and egg products sold in this state shall be from hens that are housed in accordance with the UEP Animal Husbandry Guidelines and provided with no less than one square foot of usable floor space per egg-laying hen.

E. Beginning no later than January 1, 2025, all egg-laying hens in this state shall be housed in a cage-free manner.

F. Beginning no later than January 1, 2025, all eggs and egg products sold in this state shall be from hens housed in a cage-free manner.

G. Subsections (A) ~~and (B)~~ through (F) of this rule do not apply to egg producers or business owners or operators 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)~~ through (E) of this rule also do not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.

H. Beginning no later than October 1, 2022, in order to sell eggs or egg products within the state, a business owner or operator must have a certificate from the Supervisor certifying that the eggs or egg products are produced in compliance with Subsections subsections (C) through (F), or are exempt under subsection (G). The Supervisor will certify that eggs and egg products are produced in compliance with subsections (C) through (G) if the eggs or egg products are accompanied by documentation from a government or private third-party inspection and continuous process verification service that the Supervisor deems acceptable establishing that the eggs or egg products were produced in compliance with this Section. The immediate container of eggs and egg products shall be plainly and conspicuously marked with the words "ARS 710J" in bold-faced type not less than one-eighth inch in height; or in another manner pre-approved by the department.

I. It shall be a defense to any action to enforce this Rule that a business owner or operator relied in good faith upon a written certification by the supplier that the eggs or egg products at issue were derived from an egg-laying hen which was housed in compliance with this Section.

~~D~~J. 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~~K. 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~~L. 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.

Summary of March 29, 2022 Study Session Discussion of Item D-7

Below please find a summary of the comments and discussion at the March 29, 2022 Study Session related to agenda item D-7, the Department of Agriculture's rulemaking to amend rules in Title 3, Chapter 2, Article 9 related to cage-free eggs.

The Arizona Farm Bureau Federation (Bureau) spoke in opposition to the rulemaking (00:23:32)**:**

- The Bureau believes the rule is inconsistent with the scope of the Department's authority.
- The Department does not adequately show in its rulemaking that there is a significant public benefit to this rule.
- The Bureau believes that the Department's economic impact statement is incomplete because it relies significantly on a proposed ballot initiative as the justification for this rulemaking which they do not believe is the kind of benefit, staving off a political fight, that rulemakings need to fulfill to in order to be appropriate under its rulemaking authority.
- The Bureau also believes the Department has inadequately responded to comments based on this rule, specifically comments that have some legal challenges to the Department's authority.
    - In particular, there is a current case under review with the United States Supreme Court, related to a similar rule that was enacted by ballot measure in California (Proposition 12). The question under consideration is whether allegations a state law has dramatic economic effects largely outside of the state violates the Dormant Commerce Clause. Because this rule would require every egg sold in our state to be from a pen that meets the requirements adopted by the rule, it would impose these burdens on out-of-state producers, just like the question in Proposition 12. The Bureau believes it would be prudent for the State to wait until it knows the outcome of this case to act on this rulemaking, if it is possible this rulemaking is going to open up the state to a rule that will be litigated and challenged based on its constitutionality.
    - ***Council staff note***: *This case appears to be* National Pork Producers Council v. Ross. *The district court dismissed the complaint in this case for failure to state a claim, and the U.S. Court of Appeals for the Ninth Circuit affirmed, finding the complaint did not plausibly plead that Proposition 12 violates the dormant Commerce Clause under either theory. The case was appealed to the Supreme Court, granted cert, and argued in October 2022. The Supreme Court has not yet issued an opinion.*
- The Council should not allow the rule to be adopted because the Department does not have the authority to enact this rule or, in the alternative, the Department should wait to adopt the rule until we know the outcome of the case currently pending before the Supreme Court before opening up our state to potential litigation.

- While a significant portion of egg production occurs in Arizona, Arizona imports eggs from Colorado among other states, so this rulemaking would have an impact on entities we are currently purchasing eggs from.
- Legislation adopted several years ago gives the Department general rulemaking authority to adopt housing standards for hens that produce eggs sold in this state. On its face, the Bureau understands the Department's assertion that it gives it the ability to make rules for that. The Bureau believes that ability is limited to hens that are actually housed in this state. That the rule would impose those same restrictions on out-of-state producers, which the Bureau does not believe Arizona has the ability to do, exceeds the Department's authority under that statute.
- Also, that the rule would incorporate outside third-party standards that may run afoul of the non-delegation doctrine, federalism principles, and this is something the legislature is better intended to do and the Department was not actually given the authority to adopt rules in this manner under this statute. There are other statutes related to meat inspection that grant the Department express authority to adopt third-party standards. The statutes at issue here do not give the Department authority to do that.
- Under the statutes that govern this Council and the statutes that govern rulemaking, rulemaking has to be necessary to fulfill a public health, safety, or welfare concern. The Bureau does not believe the Department has adequately shown that concern either in its justification for the rulemaking or its cost-benefit analysis.

Council staff note: *The arguments outlined above, raised by the Arizona Farm Bureau Federation and considered by the Council at the March 29, 2022 Study Session, mirror the arguments now being made in the A.R.S. § 41-1033(G) petition from the Pacific Legal Foundation which is currently before the Council.*

The Department of Agriculture's (Department) response to the Bureau's statements (00:29:54)**:**

- Rulemaking is being done on the request of egg producers as well as the public. It gives the producers an appropriate timeline to establish their operations and change to the environment the regulation asks for. With this, the producer has enough time to convert their cages and gives them a set timeline that is actually manageable for the producer.
- Legislature granted the Department authority to establish rules for the husbandry standards of animals.
- The rules are not new and have been in place since 2009. The Department is just expanding on that rule.
- The Department currently uses the United Egg Producer (UEP) guidelines, an industry-wide accepted standard, as a base-line for this rulemaking. This does not make the UEP standards the sole standards, it is still the Department's standards that apply to this rule.
- This rulemaking is done on the request of the egg producers and is heavily supported. The Department received over 1,650 written comments in support of the rule and 109 opposing this rule. Some supporting the rule include the Arizona Cattle Feeders Association, members of the State Legislature, Arizona Farm and Ranch Group,

Hickman's Family Farms, the Pacific Egg Association, and United Dairymen of Arizona. All of those interest groups have a great stake in confined animal housing and the care of animals. All of those groups are in support and they agree with the Department's ability and legality of this rulemaking.

- Department has authority to establish poultry husbandry standards for eggs that get produced and sold in Arizona. Does not dictate what other states have to do. If they want to sell eggs in Arizona, they need to meet certain standards. The Department is laying out those standards expected from eggs sold in Arizona. Standards are accepted industry-wide and are commonplace throughout U.S.. Department is setting forth a timeframe for producers to comply with industry demands.

The Department's response to Council Member Brenda Burns' question regarding consequences of non-compliance (00:33:32)**:**

- Department does a variety of inspections related to the egg program, most of which are done at the wholesaler and distribution centers. As such, the Department would not expect non-compliant eggs to arrive at retail stores. It is not the fault of the retailer if the distributor delivered eggs that are not meant for sale in Arizona and would not be punished.
- It is not a criminal offense to sell non-compliant eggs. The first offense for the distributor is a verbal warning. There is a penalty schedule within the rulemaking that gradually ups the penalty from verbal warning to $20 per offense. Department will provide outreach to distributing centers, another reason for the delayed implementation date. If inspectors found non-compliant eggs at a retailer, a hold would be placed on the eggs and they would be sent back to the distributing center to be replaced with Arizona-compliant eggs.

The Department's response to Council Member Frank Thorwald's question regarding impact of rulemaking on small egg producers (00:42:57)**:**

- Department has the authority to exempt smaller producers (20,000 hens or less) from poultry husbandry standards. With this rulemaking, the eggs need to be labeled correctly to be sold in Arizona. The eligible producers would be on file with the Department as having sellable caged eggs.
- The 20,000 hen exemption is written in statute in order to reduce burdens on small businesses and give them additional opportunity within the state.
- If there is a producer with 20,000 hens or less, either in-state or out-of-state, they will still be able to sell caged eggs in Arizona.

Bureau's response to Chairperson Sornsin's question regarding what stakeholders remained opposed to this rule change and what is causing this opposition (00:46:00)

- The Bureau opposes the policy the rule sets forward, including allowing the agency to act outside of its authority and justifying a rulemaking action based off of the threat of a ballot initiative
- This opposition is supported by livestock and crop producers

United Egg Producers spoke in support of the rulemaking (00:48:56)

- UEP is the national trade association and represent 90% of the US Egg Industry or 300 million hens, and has supported the cage free rulemakings in nine states
- Because this transfer to cage free is currently proposed across all western states at the request of the industry and customers, this rulemaking is conducted with the support of the egg producers as it allows the industry to negotiate timeframes to implement the new rules and prevent a referendum with a much shorter implementation time.
- If this regulation doesn't pass with the negotiated timeframes, Hickman Family Farms and other egg purveyors will likely go out of business due to lack of time and money to build these new farms.

Kevin Hanger from Hickman Family Farms spoke in support of the rulemaking (00:54:08)

- Hickman Family Farms sponsored a bill that passed in 2008, to give the director of the Department authority to "adopt rules for poultry husbandry and the production of eggs sold in this state." Because of the passage of this bill, the Department has been adopting and enforcing rules regarding egg production since 2009.

Patrick Brayer from Arizona Farm and Ranch Group in support of this rulemaking (00:59:18)

- Ballot initiatives had previously passed and negatively impacted farm and agriculture. In anticipation of this ballot initiative also passing they have worked with the Governor's office, the AG, and Hickman Family Farms to move forward with a rulemaking that allows the egg producer to protect themselves in the least restrictive means possible.
- The rulemaking has prevented the voters from moving forward with the ballot initiative. If they were to move forward, this would require all egg producers to comply with the cage free egg rules by July 1, 2023, which would result in crippling the industry in Arizona and euthanizing thousands of hens.
- The egg farmers originally went to the legislature. They went through the house and were prepared to go through committee and floor except voting was disrupted by COVID. They then spoke with Senator Kerr, representative Dunn, and other legislators and were told to take it through rulemaking process (1:18:00)

Glenn Hickman from Hickman Family Farms spoke in support of the rulemaking (1:05:00)

- Every egg producer in Arizona was notified about this rule.
- This regulation is requested because it gives egg producers certainty, a level playing field, and a timeline to become cage free.

Glenn Hickman's response to Council member Thorwald's question regarding what impact the shorter timeframe would have on egg producers (1:11:48)

- The ballot initiative as filed would have been voted on November 2022 and effective July 1, 2023. Egg producers would have been unable to comply with the timeline. The January 2025 timeline is more reasonable for their capabilities.

UEP's response to Council member Ames' question regarding what percentage of the eggs currently sold in Arizona are cage free (1:13:57)

- Only general numbers for the USA were available. In 2012, 6.7% of eggs sold were cage free; in 2017, 11.1% were cage free, and in 2022 it was 30%. It is expected that in 2025-2026 cage free eggs will be the only choice for grocery stores, restaurants, and realtors, resulting in 70-80%.
- UEP stated that the cost of eggs would be determined by the retailer so they could not speak directly to the cost, but could speculate that the cost for cage free eggs will come down as they become the standard for the industry.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

(a) The agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice

A. A rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.

B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

C. An agency shall not base a decision regarding any filing or other matter submitted by a licensee on a requirement or condition that is not specifically authorized by a statute, rule, federal law or regulation or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a requirement or condition for approval of a decision on any filing or other matter submitted by a licensee unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.

D. An agency shall not:

1. Make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.

2. Make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority.

3. Make a rule that is not specifically authorized by statute.

E. This section may be enforced in a private civil action and relief may be awarded against the state. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against the state for a violation of this section.

F. A state employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the agency's adopted personnel policy.

G. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.

H. An agency shall prominently print the provisions of subsections B, E, F and G of this section on all license applications, except license applications processed by the corporation commission.

I. The license application may be in either print or electronic format.