DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 7

New Article: Article 1, Article 2

New Section: R21-7-101, R21-7-102, R21-7-103, R21-7-104, R21-7-105, R21-7-106, R21-7-107, R21-7-108, R21-7-109, R21-7-110, R21-7-111, R21-7-112, R21-7-113, R21-7-114, R21-7-115, R21-7-116, R21-7-117, R21-7-118, R21-7-119, R21-7-120, R21-7-121, R21-7-122, R21-7-123, R21-7-124, R21-7-125, R21-7-126, R21-7-127, R21-7-128, R21-7-129, R21-7-130, R21-7-131, R21-7-132, R21-7-133, R21-7-134, R21-7-135, R21-7-136, R21-7-201, R21-7-202, R21-7-203, R21-7-204, R21-7-205, R21-7-206, R21-7-207, R21-7-208, R21-7-209, R21-7-210, R21-7-211, R21-7-212, R21-7-213, R21-7-214, R21-7-215, R21-7-216, R21-7-217, R21-7-218, R21-7-219, R21-7-220, R21-7-221, R21-7-222, R21-7-223, R21-7-224, R21-7-225, R21-7-226, R21-7-227, R21-7-228, R21-7-229, R21-7-230, R21-7-231, R21-7-232, R21-7-233, R21-7-234, R21-7-235, R21-7-236, R21-7-237, R21-7-238, R21-7-239, R21-7-240

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: **Sep 6, 2023**

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

FROM: Council Staff

DATE: **Jul 27, 2023**

SUBJECT: **DEPARTMENT OF CHILD SAFETY**
Title 21, Chapter 7

New Article: Article 1, Article 2

New Section: R21-7-101, R21-7-102, R21-7-103, R21-7-104, R21-7-105, R21-7-106, R21-7-107, R21-7-108, R21-7-109, R21-7-110, R21-7-111, R21-7-112, R21-7-113, R21-7-114, R21-7-115, R21-7-116, R21-7-117, R21-7-118, R21-7-119, R21-7-120, R21-7-121, R21-7-122, R21-7-123, R21-7-124, R21-7-125, R21-7-126, R21-7-127, R21-7-128, R21-7-129, R21-7-130, R21-7-131, R21-7-132, R21-7-133, R21-7-134, R21-7-135, R21-7-136, R21-7-201, R21-7-202, R21-7-203, R21-7-204, R21-7-205, R21-7-206, R21-7-207, R21-7-208, R21-7-209, R21-7-210, R21-7-211, R21-7-212, R21-7-213, R21-7-214, R21-7-215, R21-7-216, R21-7-217, R21-7-218, R21-7-219, R21-7-220, R21-7-221, R21-7-222, R21-7-223, R21-7-224, R21-7-225, R21-7-226, R21-7-227, R21-7-228, R21-7-229, R21-7-230, R21-7-231, R21-7-232, R21-7-233, R21-7-234, R21-7-235, R21-7-236, R21-7-237, R21-7-238, R21-7-239, R21-7-240

Summary:

This regular rulemaking from the Department of Child Safety ('Department' or 'DCS') seeks to add two (2) new articles and add seventy-six (76) new sections in Title 21, Chapter 7, Child Welfare Agency Licensing. The Department was created on May 29, 2014 and was authorized to establish rules, regulations and standards for child welfare agencies and exercise supervision of those agencies. The responsibilities and authority that were adopted in the Department of Economic Security (DES) for Child Welfare Agency licensing were transferred to

the Department and this rulemaking will transfer the existing rules in Title 6, Chapter 5, Articles 69 & 74 from DES and create new rules for Child Welfare Agencies to DCS. In addition, this rulemaking will update licensing requirements, expectations, and practices as well as comply with federal and state laws and update practices to help ensure the safety and well-being of children in care.

This rulemaking does establish a new fee under A.R.S. § 8-467, allowing the Department to collect fees from non-contracting licensees for the purpose of licensing and supervising those licensees, and will complete the proposed course of action from the Five Year Review Report approved by Council on October 5, 2021.

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?

The Department indicates that the rules establish a new fee as authorized under A.R.S. § 8-467 for agencies seeking a Child Welfare Agency license and meet the criteria set in this statute.

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 did not review or rely on any study relevant to the proposed rules.

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

The Department of Child Safety (Department) is authorized by Arizona Revised Statutes to license Child Welfare Agencies, which includes Child Placing Agencies and Residential Group Care Facilities. With this rulemaking the responsibilities for licensing Child Welfare Agencies currently located in Title 6 (Department of Economic Security) are relocated to Title 21 (Department of Child Safety). The rules currently under Title 6, Chapter 5, Articles 69 and 74 are outdated; this rulemaking will also update licensing requirements, expectations, and practices. While other rules in Title 21 were created and implemented in 2015 and 2016, the rules pertaining to Child Placing Agencies and Residential Group Care Facilities were not completed at that time and remained under Title 6. The Department did not conduct a complete financial analysis because each child welfare agency (child placing agency and residential group care facility) is an autonomous unit, making it difficult to calculate the financial impact as a whole. However, the Department can state that any increased cost would be minimal, in reference to a child welfare agency operating as a residential group care facility, as the majority of the rules are already incorporated into contracts with said agencies and facilities. As of March 30, 2023, there are 85 licensed agencies operating as a residential group care facility or shelter, and of the 85 licensed agencies, 77 (91%) of those agencies have a contract with the Department. Furthermore, as of March 30, 2023, those 85 licensed agencies have a total of 249 residential

group care facilities and 13 shelter. A total of 241 of those residential group care facilities/shelters fall under a contract with the Department. In addition, many of the new rules are being enacted in order to comply with federal and state laws as well as updating practices to help ensure the safety and well-being of children in care. As mentioned, a Child Welfare Agency also includes a Child Placing Agency. As of March 29, 2023, there are seven (7) child placing agencies licensed. Child placing agencies do not contract with the Department of Child Safety.

Stakeholders include the Department, child welfare agencies, vendors to child welfare agencies, children in out-of-home care, children in the physical custody of the federal government, municipal fire and safety inspection divisions (compliance), city zoning divisions (compliance) and the general public (safe homes in neighborhood).

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 believes the proposed rules, as written, are a means to secure the care and safety of children receiving services from a Child Welfare Agency. Child Welfare Agencies, as documented in their documentation of the need for the services they are providing, may each provide services that may be distinct from services provided by another agency (and organization may also differ). The rules do not dictate the type of individual services each Agency provides (or how they organize themselves). Additionally, once licensed the Agencies may seek contracts, grants, or other financial means to operate their business. Each contract and/or grant has the potential to vary. Given the individuality of each business it is impossible to determine the financial impact the rules will have on these businesses. Some rules that are new to rules may not be new to the Agency based on their contract and the services they are providing. In addition to rules addressing the care, safety, and services to children in out-of-home care and given all the potential differences between Agencies, their business, their operation, and their contracts or other means of receiving financial means, it is not possible to determine if there are any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. The rules do allow Agencies to request an "alternative method of compliance" to the rules in which the Department of Child Safety will analyze possible impacts on care and safety of children in out-of-home care.

6. What are the economic impacts on stakeholders?

The Department indicates that the responsibility of monitoring compliance with the rules in this rulemaking fall under the Office of Licensing and Regulation (OLR), a program unit (Administration) within the Department of Child safety (DCS or Department). The Department believes that the operation of the OLR imposes the least cost and burden to the regulated public and the general public, while safeguarding the interest of the protected public. There are no costs charged to child welfare agencies which do not meet the criteria specified in A.R.S. § 8-467.

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

The Department states that there are no changes between the proposed rulemaking and the final rulemaking.

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

The Department received one comment from a group of stakeholders regarding increasing the nondiscrimination protections of LGBTQ+ youths in the child welfare system. In their comment, they submitted proposed recommendations that would "provide for the specific needs of a significantly overrepresented group in the child welfare system who experience worse outcomes, LGBTQ+ youth."

The Department responded that a policy was issued on December 2, 2021 to "provide[ ] a foundation and framework for supporting the emotional and physical safety and well-being of Lesbian, Gay, Bisexual, Transgender, or Questioning/Queer (LGBTQ+) and gender diverse children in the custody of the Department." The Department contracts with 89% of of the child welfare agencies licenses with the state and a part of the contractual obligations is adhered to Department policies, including the policy referenced above.

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

The Department states in an email to Council staff that a license is required to operate a Child Welfare Agency, however these licenses are exempt under A.R.S. § 41-1037 (A)(5), *The permit, license or authorization is issued pursuant to A.R.S. § 8 -505,* and does not require a general permit.

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 Department indicates that the rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking from the Department of Child Safety seeks to add two (2) new articles and add seventy-six (76) new sections in Title 21, Chapter 7, Child Welfare Agency Licensing. In addition to updating licensing requirements, expectations, and practices and complying with federal and state laws, this rulemaking also seeks to complete the proposed course of action in the five year review report approved by Council on October 5, 2021.

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 CHILD SAFETY

David Lujan, Director
Katie Hobbs, Governor

June 21, 2023

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Title 21, Chapter 7, Articles 1 and 2 - Notice of Final Rulemaking

Dear Ms. Sornsin:

The attached final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for your use in reviewing the rulemaking package:

A. Close of Record Date:
The rulemaking record closed on February 23, 2023. This rulemaking package is being submitted within the 120 days allowed for Final Rulemaking. An oral proceeding was held on February 22, 2023 in person and February 23, 2023 via Zoom and Microsoft Teams with option to call-in. One written comment was received during the comment period.

B. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
This rulemaking relocates rules currently under Title 6 (Department of Economic Security), Chapter 5, Articles 69 and 74 to Title 21 (Department of Child Safety), Chapter 7, Articles 1 and 2. The Five-Year-Review Report that was approved by the Governor's Regulatory Review Council on October 5, 2021, addressed the rules under Title 6, Chapter 5, Articles 69 and 74 and included the intent to relocate the rules to Title 21.

C. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee:
This rulemaking does establish a new fee as authorized under A.R.S. § 8-467 for agencies seeking a Child Welfare Agency license and meet the criteria set in this statute. Child Welfare Agencies that do not meet the criteria in this statute are not charged a fee.

P.O. Box 6030 ♦ Site Code C010-23 ♦ Phoenix, AZ 85005-6030
Telephone (602) 255-2500

D. Whether the rule contains a fee increase:
The rulemaking does not contain a fee increase.

E. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032:
The Department of Child Safety is not requesting an immediate effective date.

F. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation or justification for the rule:
The Department certifies that the preamble discloses a study that was conducted to assist with the development of contract rates for residential group care facilities and shelters. However, the study did not pertain and was not used for the purposes of rule analysis or rule making.

G. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee (JLBC) of the number of new full-time employees necessary to implement and enforce the rule:
Child Welfare Agencies that contract with the federal government, such as the Office of Refugee Resettlement program were previously licensed by the Arizona Department of Health Services (DHS); however, it was determined that it would be more appropriate for these agencies to be licensed by the Department of Child Safety. As a result of A.R.S. § 8-467, it gave the Department the authority to charge a fee if the applicants met the criteria of this statute and subsequently the Department hired new employees to meet the increased demand this created. At the April 21, 2021 Budget Committee, the Department of Child Safety included information on the additional number of employees needed to meet the new demands.

H. A list of all documents enclosed:
1. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text
2. Economic, Small Business, and Consumer Impact Statement
3. Written comment received during the comment period and the Department's response
4. Copy of the authorizing and implementing statutes
5. Current rules
6. Governor's Office Approval via email from the Policy Advisor (Approval of the request of an exemption to the rulemaking moratorium and approval of the Notice of Final Rulemaking)

If you have any questions, please contact Angie Trevino, Rules Development and Policy Specialist at (602) 619-3163 or by email at angelica.trevino@azdcs.gov.

Sincerely,

David Lujan

David Lujan
Director

Enclosure

NOTICE OF FINAL RULEMAKING

TITLE 21. CHILD SAFETY

CHAPTER 7. DEPARTMENT OF CHILD SAFETY - RESERVED

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
Article 1	New Article
R21-7-101	New Section
R21-7-102	New Section
R21-7-103	New Section
R21-7-104	New Section
R21-7-105	New Section
R21-7-106	New Section
R21-7-107	New Section
R21-7-108	New Section
R21-7-109	New Section
R21-7-110	New Section
R21-7-111	New Section
R21-7-112	New Section
R21-7-113	New Section
R21-7-114	New Section
R21-7-115	New Section
R21-7-116	New Section
R21-7-117	New Section
R21-7-118	New Section
R21-7-119	New Section
R21-7-120	New Section
R21-7-121	New Section
R21-7-122	New Section
R21-7-123	New Section
R21-7-124	New Section
R21-7-125	New Section
R21-7-126	New Section

R21-7-127	New Section
R21-7-128	New Section
R21-7-129	New Section
R21-7-130	New Section
R21-7-131	New Section
R21-7-132	New Section
R21-7-133	New Section
R21-7-134	New Section
R21-7-135	New Section
R21-7-136	New Section
Article 2	New Article
R21-7-201	New Section
R21-7-202	New Section
R21-7-203	New Section
R21-7-204	New Section
R21-7-205	New Section
R21-7-206	New Section
R21-7-207	New Section
R21-7-208	New Section
R21-7-209	New Section
R21-7-210	New Section
R21-7-211	New Section
R21-7-212	New Section
R21-7-213	New Section
R21-7-214	New Section
R21-7-215	New Section
R21-7-216	New Section
R21-7-217	New Section
R21-7-218	New Section
R21-7-219	New Section
R21-7-220	New Section
R21-7-221	New Section
R21-7-222	New Section
R21-7-223	New Section

R21-7-224	New Section
R21-7-225	New Section
R21-7-226	New Section
R21-7-227	New Section
R21-7-228	New Section
R21-7-229	New Section
R21-7-230	New Section
R21-7-231	New Section
R21-7-232	New Section
R21-7-233	New Section
R21-7-234	New Section
R21-7-235	New Section
R21-7-236	New Section
R21-7-237	New Section
R21-7-238	New Section
R21-7-239	New Section
R21-7-240	New Section

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

Authorizing statute: A.R.S. § 8-453(A)(5)

Implementing statute: A.R.S. §§ 8-502, 8-503, 8-505, 8-506.01, 8-519, 8-520, and 8-467

3. The effective date of the rule:

In accordance with A.R.S. § 41-1032, the rules will become effective 60 days after filing with the Office of 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 proposed rule:

Notice of Rulemaking Docket Opening: 29 A.A.R. 201, January 13, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 141, January 13, 2023

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

Name: Angie Trevino, Rule Development Specialist

Address: Department of Child Safety
3003 N. Central Avenue
Phoenix, AZ 85012

Telephone: (602) 619-3163

E-mail: Angelica.Trevino@azdcs.gov

Web site: https://dcs.az.gov/about/dcs-rules-rulemaking

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.R.S. § 8-451, effective May 29, 2014, created the Arizona Department of Child Safety, "the Department" or "DCS" and the responsibilities and authority in Title 6, Chapter 5, Articles 69 and 74 for Child Welfare Agency licensing were transferred to the new state agency. Arizona Laws, 2014, Second Special Session, Chapter 1, Section 157, Succession, (C) states "Administrative rules and orders that were adopted by the Department of Economic Security continue to be in effect until superseded by administrative action by the Department of Child Safety." This rule making is necessary in creating new rules for Child Welfare Agencies that will fall under Title 21 (Department of Child Safety) and will allow for the existing rules to be removed from their current location under Title 6, Chapter 5, Articles 69 and 74 of the Arizona Administrative Code.

A.R.S. § 8-503 authorizes the Department to establish rules, regulations and standards for child welfare agencies and exercise supervision of all child welfare agencies. A.R.S. § 8-505 gives the Department the authority to issue and renew licenses for child welfare agencies and outlines criteria that must be addressed, including the inspection of a Child Welfare Agency prior to licensing or renewal. A.R.S. § 8-506.01 gives the Department the authority to deny, suspend or revoke the license of any child welfare agency. A.R.S. § 8-519 covers the requirements of Child Welfare Agencies to keep records and provide information to the Department. A.R.S. § 8-502 describes the confidentiality

of the personal information of an individual applying for a Child Welfare Agency license and what is considered confidential regarding Child Welfare Agency Licensee information. A.R.S. § 8-520 describes the actions which a Child Welfare Agency could commit that constitute a Class 2 misdemeanor. A.R.S. § 46-141 requires any person licensed by the Department or employed by a licensee to have a Level One fingerprint clearance card from the Arizona Department of Public Safety. A.R.S. § 8-804 requires the Department to conduct a central registry background check for any person who applies for a Child Welfare Agency license or who works in a residential group care facility. A.R.S. § 8-467 allows the Department to establish and collect fees from non-contracting licensees to cover costs of licensing and of supervision non-contracting licensees.

The Department has not received applications nor has licensed an agency that wants to operate as an outdoor experience program as defined in Title 6, Chapter 5, Article 74 for many years. An outdoor experience program does not fit into current practice and is not included in these proposed rules. Any outdoor experience programs for providing behavioral health services to children continue to be licensed by the Arizona Department of Health Services.

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:

In December 2015, the Department of Child Safety (DCS) contracted with Burns and Associates Inc. to assist in the development of contract rates for residential group care facilities and shelters. The study did not pertain and was not used for the purposes of rule analysis or rule making.

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

The Department of Child Safety (Department) is authorized by Arizona Revised Statutes to license Child Welfare Agencies, which includes Child Placing Agencies and Residential Group Care Facilities. With this rulemaking the responsibilities for licensing Child Welfare Agencies currently located in Title 6 (Department of Economic Security) are relocated to Title 21 (Department of Child Safety). The rules currently under Title 6, Chapter 5, Articles 69 and 74 are outdated; this rulemaking

will also update licensing requirements, expectations, and practices. While other rules in Title 21 were created and implemented in 2015 and 2016, the rules pertaining to Child Placing Agencies and Residential Group Care Facilities were not completed at that time and remained under Title 6. The Department did not conduct a complete financial analysis because each child welfare agency (child placing agency and residential group care facility) is an autonomous unit, making it difficult to calculate the financial impact as a whole. However, the Department can state that any increased cost would be minimal, in reference to a child welfare agency operating as a residential group care facility, as the majority of the rules are already incorporated into contracts with said agencies and facilities. As of March 30, 2023, there are 85 licensed agencies operating as a residential group care facility or shelter, and of the 85 licensed agencies, 77 (91%) of those agencies have a contract with the Department. Furthermore, as of March 30, 2023, those 85 licensed agencies have a total of 249 residential group care facilities and 13 shelter. A total of 241 of those residential group care facilities/shelters fall under a contract with the Department. In addition, many of the new rules are being enacted in order to comply with federal and state laws as well as updating practices to help ensure the safety and well-being of children in care. As mentioned, a Child Welfare Agency also includes a Child Placing Agency. As of March 29, 2023, there are seven (7) child placing agencies licensed. Child placing agencies do not contract with the Department of Child Safety.

Prior to 2021, there was no statue or rule authorizing the Department to charge fees for licensing residential group care facilities. However, in 2021 the 55th Legislature, First Regular Session passed HB2399 creating A.R.S. § 8-467 which allows the Department to charge a licensing fee pertaining only to residential group care facilities that met a very specific criteria. A.R.S. § 8-467 defines "noncontracting licensee" as "a licensee that does not contract with this state, that contracts with the federal government, that receives only federal monies and that employs individuals who provide direct services to children." Currently, the recently created statute impacts license applicants such as Southwest Key and Neighborhood Ministries, agencies contracting with the Office of Refugee Resettlement (ORR) program. As of April 2023, there is also one other agency seeking licensure for the same purposes to contract with ORR. The Department charges $600 per licensed bed, annually, for the placement of children to those agencies that fall under the criteria set in A.R.S. § 8-467. Southwest Key and Neighborhood Ministries are agencies responsible for the care of 1526 and 10 children, respectively, as of April 2023. As such, the Department funded 10 new positions to meet the increased demands of licensing and monitoring residential group care facilities that are only contracted with the ORR program. Pursuant to statute, the Joint Legislative Budget Committee (JLBC) was notified of these new positions through the Department's regular quarterly reporting

requirements, and specifically, through its report submitted to the Committee for the April 27, 2021 meeting.

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

There are 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 Department received combined comments from stakeholders including the ACLU of Arizona, Children's Action Alliance, Lambda Legal, Divine Sisters Group Home, and Beth Rosenberg. The comments requested additional protections in the regulations for LGBTQ+ youth. Specifically, the comments requested clear, explicit nondiscrimination protections, amendments to align with federal guidance, and specific policies that prohibit discrimination and affirm and support LGBTQ+ youth.

The Department responded that many of the concerns raised by the comments are addressed in contract, policy, or federal law. The Department committed to continuing to work with stakeholders to address the needs of LGBTQ+ youth in its care.

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:

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:

A license is required to operate a Child Welfare Agency. Child Welfare Agency licenses are exempt under A.R.S. § 41-1037 and do not require a general permit.

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

Federal laws 42 U.S.C. 675. The rules are not more stringent than federal law.

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

No analysis was submitted.

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

Not applicable

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 21. CHILD SAFETY

CHAPTER 7. DEPARTMENT OF CHILD SAFETY - ~~RESERVED~~ CHILD WELFARE AGENCY LICENSING

ARTICLE 1. LICENSING REQUIREMENTS FOR A CHILD WELFARE AGENCY

Section

ARTICLE 2. RESIDENTIAL GROUP CARE FACILITIES

Section

R21-7-222. Recreation; Leisure; Cultural Activities; Community Interaction

R21-7-223. Religion; Culture; Ethnic Heritage

R21-7-224. Health Care Services

R21-7-225. Medications; Allergies

R21-7-226. Medication Administration; Handling; Storage

R21-7-227. Nurture; Supervision; Positive Behavior Management

R21-7-228. Property and Personal Searches

R21-7-229. Buildings and Grounds

R21-7-230. Kitchens; Food Preparation; Dining Areas

R21-7-231. Sleeping Arrangements; Areas; Furnishings

R21-7-232. Bathrooms

R21-7-233. Other Facility Space; Staff Quarters

R21-7-234. Fire; Emergency; Fire Prevention

R21-7-235. General Safety

R21-7-236. Pools

R21-7-237. Access; Transportation; Outings

R21-7-238. Special Provisions for Shelter Care Facilities

R21-7-239. Special Provisions for Transitional Program and Independent Living Program

R21-7-240. Special Provisions for Residential Group Care Facility with Multi-Purpose Premises

ARTICLE 1. LICENSING REQUIREMENTS FOR A CHILD WELFARE AGENCY

R21-7-101. Definitions

In addition to the definitions contained in A.R.S. § 8-501, the following definitions apply in this Chapter:

1. "Abuse" means the same as in A.R.S. § 8-201.
2. "Administrative Completeness Review Time Frame" means the same as in A.R.S. § 41-1072.
3. "Adult" means any person 18 years of age or older.
4. "Adverse action" means a license denial, suspension, or revocation.
5. "After care" means services provided to a child in care after the child is discharged from a licensee's care and may also include services for the child's family.
6. "Agency" means a Child Welfare Agency.
7. "Amendment" means the addition, deletion, correction, or other change proposed or made to a license.
8. "Applicant" means a person or group of persons, including any individual with ownership interest, who submits an application to the Department to become licensed or to renew a license to operate a Child Welfare Agency.
9. "Behavior management" means the policy, procedure, and technique a licensee uses to control a child in care's conduct as prescribed in R21-7-227.
10. "Board of Directors" means a group of individuals elected to establish policies and jointly supervise the activities of an organization, and makes decisions on major company issues. An Agency's Board of Directors may also be referred to as a Governing Body.
11. "Calendar day" means all days, including weekends and Arizona state holidays.
12. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
13. "Centralized Intake Hotline" means a dedicated unit established by the Department, under A.R.S. § 8-455, to receive and process communications regarding suspected abuse or neglect of a child in the state of Arizona.
14. "Chief Executive Officer" or "CEO" means the person responsible for overall administration of a Child Welfare Agency. Depending on the type of organization, the Chief Executive Officer may also be referred to as the Executive Director, Administrator, or Director of the Agency, or any other title that refers to an individual who serves this function.
15. "Child" means any person less than 18 years of age.
16. "Child in care" means a child that is placed in the physical custody of an Agency, licensee, or residential group care facility other than with the child's parent or guardian.

17. "Child Placement" or "placement activity" means the selection, by a person or agency other than the child's parent or guardian, of a foster family or prospective adoptive family, or effecting the movement of the child into the foster family or prospective adoptive family.
18. “Child Placing Agency” means any Child Welfare Agency that places children in foster homes for temporary care or in prospective adoptive homes for adoption. The children placed by the Child Placing Agency are not in the custody of the Department.
19. "Child safety worker" means the same as in A.R.S. § 8-801.
20. “Corrective action” means a specific course of conduct an Agency shall follow to remedy violations of the licensing requirements prescribed in this Chapter within a specified period of time.
21. “Corrective Action Plan” means a written document describing an Agency’s corrective action, as prescribed in R21-7-113.
22. “Criminal History self-disclosure” means a person’s statement made under penalty of perjury, using the form approved by the Department, attesting to whether the person:
    a. Has a record of any arrests, convictions, or pending indictments;
    b. Has committed a crime specified in A.R.S. § 41-1758.07 as a precluding crime for the issuance of a fingerprint clearance card meeting Level One requirements; or
    c. Is a registered sex offender.
23. “DCS Report” means the same as in A.R.S. § 8-201.
24. “De-escalation” means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions that interrupt a child’s behavior crisis and calm the child.
25. “Department” or “DCS” means the Arizona Department of Child Safety.
26. “Developmentally appropriate” means:
    a. The activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be appropriate for a child, based on the development of cognitive, emotional, physical and behavioral capacities that are typical for an age or age group; and
    b. In the case of a specific child in care, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.
27. “Direct care services” means in-person interaction between direct care staff and a child in care. Direct care services do not include incidental contact by non-direct care staff and a child in care.
28. “Direct care staff” means staff whose responsibilities include providing direct care services.

29. "Directive Corrective Action Plan" means a plan to cure deficiencies identified by the Department in which the Department gives specific direction as to the corrections needed.
30. "Discharge plan" means a written program of action developed by an Agency in cooperation with a child in care's planning participants that includes:
    a. A program of action to prepare a child in care for release from a Child Welfare Agency; and
    b. An after care referral.
31. "Disqualifying act" means a substantiated finding for a specific individual that is identified in the document "DCS Central Registry Disqualification Acts".
32. "Document" means to make and retain a permanent written or electronic record of a fact, event, circumstance, observation, contact, or communication; unless context dictates otherwise.
33. "Exploitation" means the act of taking advantage of, or to make use of a child selfishly, unethically, or unjustly, for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
34. "Facility" means a living environment operated by a Child Welfare Agency, where a child in care is in the care of an adult unrelated to the child.
    a. "Facility" includes a shelter care facility for a group of children that is intended to be short-term in nature, and a residential group care facility for a group of children who are intended to be placed for longer periods of time.
    b. "Facility" when referring to a Child Placing Agency facility means any physical setting in which the Child Placing Agency conducts business, including areas where a child in care may be present for less than 24 hours during transport to a foster home or other placement.
    c. "Facility" does not include a program licensed as a behavioral health service agency by Arizona Department of Health Services under A.R.S. § 36-418.
35. "File" means a place where information is stored through written, electronic, or computerized means unless context dictates otherwise.
36. "Foster care" means care and supervision provided to a child in care who is in a licensed out of home placement.
37. "Good standing" means the Child Welfare Agency is in substantial compliance with obligations under this Chapter, not subject to an open investigation, not subject to an open licensing concern, not subject to suspension, and not subject to any outstanding corrective actions.
38. "Governing body" means an individual or group of individuals responsible for the policies, activities, and operations of a Child Welfare Agency as described in R21-7-118.

39. "Health self-disclosure" means a declaration from direct care staff and any adult living in the facility, using the form provided by the Department attesting to the person's physical, medical, and emotional health. The health self-disclosure:
    a. Identifies any past or present:
        i. Major illness;
        ii. Communicable disease;
        iii. Surgery;
        iv. Drug or substance abuse problem or treatment; and
        v. Other medical, physical, or mental health condition or treatment; and
    b. Identifies all medications, treatments, adaptive equipment, or other accommodation used to reduce or eliminate any barriers caused by medical, physical, or mental health condition.
40. “Human services field” means any area of study that moves the human experience forward e.g. child development, human development, psychology, sociology, social work, medicine, and education.
41. “Individual Education Plan” or “IEP” means a written legal document that guarantees the necessary instruction, supports, and services for a particular child in care who is eligible for special education determined by a multidisciplinary team. The IEP is created through a team effort and reviewed at least once per year. An IEP is covered by special education law to include Individuals with Disabilities Education Act.
42. “Initial wellness screening” means an assessment of a child in care’s outward appearance to identify any physical or health concerns that may require urgent medical attention prior to a routine physical exam occurring by a licensed medical practitioner. The assessment shall include identification of cuts, bruising, lice, bite marks, scars, signs of intoxication, and a verbal report from the child.
43. “License” or “regular license” means a document issued by the Department that authorizes the operation of a Child Welfare Agency. A “license” does not include a “provisional license” as defined by this Article.
44. “Licensee” means the person or entity holding a Child Welfare Agency license. When used in reference to a duty, task, or obligation, the term “licensee” includes the staff who administer or work at a Child Welfare Agency and who are responsible for doing the acts necessary to fulfill the requirements of this Chapter.
45. “Licensing year” means a one-year time period that begins on the date an agency obtains a license to operate.

46. “Life Safety Inspection” means an examination of a facility and its premises by the Department to verify compliance with A.A.C. Title 21, Chapter 8, Article 1.
47. “Living unit” means a specific grouping of children who are assigned to and share a distinct and common physical space within a facility.
48. “Medical professional” means a person who holds a current license as a physician, surgeon, nurse practitioner, or physician’s assistant under A.R.S. §§ 32-1401 et seq., Medicine and Surgery; A.R.S. §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; A.R.S. §§ 32-2501 et seq., Physician Assistants; and A.R.S. §§ 32-1601 et seq., Nursing and A.A.C. R4-19-501(A)(1), Registered Nurse Practitioner, respectively.
49. “Medication” means an agent, such as a drug or substance used to prevent or treat disease, illness or injury, includes both prescribed and over-the-counter agents.
50. “Mobile dwelling” means the same as recreational vehicle as defined in A.R.S. § 41-4001. Mobile dwelling does not mean a mobile and manufactured home as defined in A.R.S. § 41-4001.
51. “Multi-Purpose Premises means”:
    a. A facility; and
    b. The property surrounding the facility that is owned, leased, or controlled by the applicant or licensee which may include:
        i. Residential space utilized separate from the program;
        ii. Commercial space, including office or retail space, operated separate from the program; and
        iii. Community centers available to populations outside of the program.
52. “Neglect” means the same as in A.R.S. § 8-201.
53. “Non-ambulatory child” means a child in care who cannot walk due to a physical disability or impairment, rather than as a result of the child’s normal age and developmental level.
54. “Normalcy” means the same as described in A.R.S. § 8-513.
55. “Operating certificate” means a document issued by the Department that authorizes the operation of a facility run by an Agency that is not in the same location as the address listed on the Child Welfare Agency license.
56. “Out-of-home placement” means the placing of a child in the physical custody of an individual or Agency other than with the child’s parent or guardian and includes placement in temporary custody under A.R.S. § 8-821 (A) or (B), voluntary placement under A.R.S. § 8-806 or placement due to a dependency action.
57. “Overall time frame” means the same as in A.R.S. § 41-1072.

58. "Person" means a corporation, company, partnership, firm, association or society, as well as a natural person.

59. "Personally identifiable information" means any information that when considered alone or in combination with other information, identifies, or permits another person to readily identify the person who is the subject of the information, and includes:

    a. Name, address, and telephone number;

    b. Date of birth;

    c. Photograph;

    d. Fingerprints;

    e. Physical description;

    f. School;

    g. Place of employment; and

    h. Unique identifying number, including:

        i. Social Security number;

        ii. Driver's license number;

        iii. Vehicle License number; and

        iv. Court case number.

60. "Placing Entity" means an agency authorized by law or contract to place children in a Child Welfare Agency.

61. "Planning participants" means the group of persons listed in R21-7-120 who participate in development and review of a child in care's service plan and discharge plan.

62. "Pool" means the same as in A.A.C. Title 21, Chapter 8, Article 1.

63. "Positive Discipline" means a teaching process through which a child in care learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to generally accepted levels of social behavior.

64. "Premises" means:

    a. A facility; and

    b. The property surrounding the facility that is owned, leased, or controlled by the applicant or licensee.

65. "Program director" means a person responsible for the development, implementation and supervision of an agency's programs and services that are carried out under the license granted by the Department and who meets the qualifications listed in R21-7-131.

66. “Provisional license” means a temporary license to operate a Child Welfare Agency, issued by the Department for a period of six months or less and is not renewable.
67. “Residential environment” means a facility building or any portion of a facility building that is used for living, sleeping, counseling, dining, or academic purposes.
68. “Residential group care facility” means a Child Welfare Agency licensed to receive children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, Child Placing Agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time and includes facilities described in Article 2 of this Chapter.
69. “Restrictive behavior management” means the same as in A.R.S. § 8-501 and is subject to the limitations in R21-7-227.
70. “Runaway” means that:
    a. The responsible agency staff is unaware of a child in care’s whereabouts, has made reasonable attempts to locate the child including contacting the child’s school, friends, and other places the child may frequent and has no information indicating when the child will return;
    b. A child in care has left a facility without the permission of the responsible agency staff; or
    c. A child in care has failed to return to a facility at an agreed upon time.
71. “Safeguard” means to take reasonable and developmentally appropriate measures to minimize the risk of harm to a child in care and to ensure that a child in care will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Chapter, safeguarding may include:
    a. Locking up a particular substance or item;
    b. Putting a substance or item beyond the reach of a child in care;
    c. Erecting a barrier that prevents a child in care from reaching a particular place, item, or substance;
    d. Using protective safety devices;
    e. Providing staff supervision; or
    f. Providing a child in care age 14 and older with safety information and generalized instruction necessary to promote the safe and appropriate use of potentially dangerous objects.
72. “Service plan” means either a Department Case Plan or a goal-oriented, time-limited individualized program of action developed by an agency in cooperation with a child's planning participants.

73. “Shelter care facility” means a Child Welfare Agency that is licensed to receive children for temporary out-of-home 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, Child Placing Agency, law enforcement agency, parent, guardian, or court. A shelter care facility provides short term care for children.
74. “Significant person” means a person who is important or influential in a child in care’s life and may include a family member or close friend.
75. “Site inspection” means a visit to a facility or administrative office for the purpose of evaluation.
76. “Sleeping area” means a single bedroom or a cluster of two or more bedrooms, located in an adjacent area of a facility, a designated space with beds devoted as a bedroom in a barracks, or dormitory.
77. “Staff” means a person engaged full-time or part-time by an Agency including paid employees, consultants, contractors, subcontractors, volunteers, students, interns, and persons otherwise affiliated with the Agency to administer, manage, work, train, or assist at or for an Agency or facility on either a temporary or permanent basis.
78. “Substantial compliance with licensing requirements” means that the nature and number of violations of licensing requirements are not significant and:
    a. Do not pose a risk to the life, health, safety, or welfare of a child in care;
    b. Do not constitute a pattern of noncompliance or a failure to implement required corrective action; and
    c. Are not the result of misrepresentation, falsification, or fraud by the applicant or licensee.
79. “Substantive review time frame” means the same as in A.R.S. § 41-1072.
80. “Threat” means an expression of intent to hurt, destroy, or take action prohibited by this Chapter or the licensee’s policies, but does not include an expression of intent to impose a planned consequence for misbehavior if the consequence is not prohibited by this Chapter or the licensee’s policies.
81. “Time and temperature control for safety food standards” means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin and conforms to the United States Food and Drug Administration Food Code.
82. “Transitional program” or “Independent living program” means services provided by a residential group care facility to prepare a child in care age 14 and older for adulthood.
83. “Unusual incident” means one or more of the events listed in R21-7-207 involving a child in care on or off the premises.
84. "Workday" means Monday through Friday excluding weekends and Arizona state holidays.

85. "Young adult" means a person less than 21 years of age who signed an extended foster care agreement and eligible for out-of-home placement under A.R.S. § 8-521.02.

R21-7-102. Compliance

The licensee under this Chapter shall operate the Agency in compliance with this Chapter, the provisions of the license, and applicable federal, state, and local law.

R21-7-103. Initial Consultation

A. Within 30 calendar days of receipt of an initial application package, the Department shall review the application and contact the applicant to schedule an initial consultation.

B. At the initial consultation, the Department shall review the submitted initial application with the applicant. The Department shall review the requirements for licensure and shall advise the applicant about any missing or incomplete information in the submitted application.

C. If the applicant fails to provide the information within the time periods specified in this Article, the Department shall close the application and send the applicant a written notice of closure.

R21-7-104. Licensing Requirements

A. A person who intends to operate a Child Placing Agency, residential group care facility, or shelter care facility shall apply for a Child Welfare Agency license.

B. A Child Welfare Agency shall meet the requirements of this Chapter.

C. Fingerprints and Arizona Level One fingerprint clearance card

1. The licensee shall ensure all Child Welfare Agency staff are fingerprinted and comply with the requirements of A.R.S. § 46-141 and provide evidence of a valid Arizona Level One fingerprint clearance card.
2. The licensee shall provide evidence that anyone listed in R21-7-107(B)(1)(b) has a valid Arizona Level One fingerprint clearance card.

D. Central Registry Check

1. The following individuals shall obtain a Central Registry Check:
   a. Individuals who apply for a Child Welfare Agency license;
   b. Staff who work in a residential group care facility in accordance with Article 2 of this Chapter, on condition that a Central Registry Check is requested prior to employment. Until the Central Registry Check is completed, staff shall not perform essential functions of their job without direct observation from their supervisor or designee;

c. Staff who work with a Child Placing Agency in positions that provide direct services to children; and

d. Member of the Governing body of a Child Welfare Agency.

2. For any staff whose primary residence is at the facility or on the premises under Article 2 of this Chapter and any adult residing with the staff in the facility or on the premises shall obtain a Central Registry Check prior to residing at the facility or on the premises.

3. The licensee shall suspend any staff who has a disqualifying act on the Central Registry pending the outcome of the process detailed in this Article.

4. For any staff who has a non-disqualifying act on the Central Registry the licensee shall assess that staff's suitability to perform their assigned duties.

5. For any individual or staff who resided in another state within five years of their hire date, the Central Registry Check must include a check of any states the individual or staff resided in during those five years.

a. The licensee shall submit the request to the Department prior to hire.

b. The Department shall not provide details regarding another state's substantiation. Upon request, the Department shall provide the licensee with information on how to request the records from the responding state.

6. The licensee shall obtain an annual Central Registry Check at or prior to the anniversary hire date for each staff and any adult residing with the staff in the facility or on the premises.

E. Licensing

1. The applicant shall cooperate with the Department to evaluate the potential and actual ability of the Agency to fulfill a need for and provide services to a child in care according to the standards prescribed in A.R.S. § 8-505 and this Chapter.

2. The applicant shall demonstrate a need for its services in the community. Demonstration of need shall consist of:

a. Verifiable written communication from potential referral sources seeking services from the applicant consistent with their program description;

b. An existing contract for Child Welfare services; or

c. Other verifiable evidence that demonstrates a need for the services.

3. To obtain this information, the Department shall make a minimum of at least one visit to the licensee facility and may conduct any staff interviews the Department deems necessary.

F. Financing

1. An Agency shall maintain complete and accurate accounts, books, and records as required by this Chapter, and in accordance with generally accepted accounting principles.

2. An Agency shall operate on the annual budget approved by its governing body before the beginning of each of the Agency's fiscal years.
3. An Agency shall maintain financial records of all receipts, disbursements, assets, and liabilities in accordance with the U.S. Internal Revenue Service (IRS) schedules. The licensee shall make these records available to the Department for inspection upon request.
4. An Agency shall obtain a financial audit by an independent certified public accountant at the Agency fiscal year-end. An Agency that had an annual income of less than $250,000 or has been licensed for less than one fiscal year, in lieu of a fiscal year-end audit by a certified public accountant, may provide verifiable information that allows the Department to evaluate the Agency's financial stability and maintain acceptable documentation that includes six months of current bank statements; six months of statements from lines of credit; and previous year's tax return.
5. The audit report shall include the following financial information and the accountant shall conduct the audit in accordance with generally accepted auditing standards:
    a. Income statement,
    b. Balance sheet,
    c. Statement of cash flow, and
    d. A statement showing monies or other benefits the licensee has paid or transferred to any of the following:
        i. Business entities affiliated with the licensee,
        ii. The licensee's directors or officers,
        iii. The licensee's chief executive officer or program director,
        iv. The family member of an applicant or licensee,
        v. Another agency, or
        vi. Another entity.
6. The Agency shall comply with the Department's request for additional financial information.

G. Operating a Child Welfare Agency without a license is a Class 2 Misdemeanor under A.R.S. § 8-520.

H. In addition to meeting the requirements of this Article, a residential group care facility shall be subject to the requirements set forth in Article 2 of this Chapter.

R21-7-105. Life Safety and Site Inspection

A. The Department shall schedule the applicant for one or more of the following:

1. A site inspection after receiving a complete initial application,

2. A site inspection after receiving an amendment request for a facility that has moved to a new location or remodeled a current location,
3. A site inspection prior to the renewal date on the license, and
4. Additional inspections as necessary.

B. During the site inspection, the Department shall:

1. Verify that the premises meets the requirements of this Chapter; and
2. Provide written documentation to the applicant or Agency detailing any deficiencies.

C. At the site inspection, the Department shall assess the Agency and each facility, and may also:

1. Interview management and staff,
2. Interview additional adults residing at a facility,
3. Interview children in care,
4. Observe meetings, if scheduled,
5. Review a random sample of client and staff files, and
6. Conduct site inspections to all Agency branch offices and facilities.

D. At any time, the Department may conduct an announced or unannounced inspection of the Agency or facility to monitor compliance.

E. The Department shall give the applicant or Agency 30 days from the date of the inspection, to correct any deficiencies on a site inspection or Life Safety Inspection unless otherwise communicated by the Department through a corrective action. If the applicant or Agency does not correct the deficiency within the prescribed time frame, the Department may deny the application, subject to the applicant's or Agency's ability to reapply under this Article.

F. The Department shall complete a Life Safety Inspection on applicants for licensure of residential group care facility to verify compliance with A.A.C. Title 21, Chapter 8, Article 1.

R21-7-106. License; Operating Certificate; Term; Non-transferability

A. License

1. A Child Welfare Agency license is valid for one year from the date of issuance or as described in R21-7-111 for a provisional license. The Agency may apply to renew the license annually. License renewal is not automatic.
2. Each license shall state in general terms the type of Child Welfare services the licensee is authorized to undertake, including any additional Child Welfare services the Agency may be licensed to provide under this Chapter. The licensee shall:
   a. Identify the Agency name,
   b. Address of the administrative office,

c. State the geographical area the Agency is licensed to operate, and

d. If licensed as a residential group care facility, the license shall also include:

i. Each facility the Agency operates,

ii. Specify children's ages and gender, and

iii. List the total number of children the Agency is authorized to serve.

3. An Agency shall post its current license in a conspicuous location visible to the public at its licensed location.

4. An Agency shall not transfer or assign a license.

B. Operating Certificate

1. If an Agency's administrative office is located separately from an Agency facility, the Department shall issue a license to the Agency and an operating certificate for each separate facility. If the Agency and facility occupy the same location, the Department shall issue only a license.

2. An operating certificate shall:

a. Identify the Agency operating the facility;

b. Identify the facility name, if different from the Agency name, and the geographical area in which the facility is authorized to operate;

c. List the type of service or program to be offered at the facility; and

d. Specify the number, gender, and ages of children the facility may receive for care.

3. An operating certificate is not valid unless it has been issued in the name of a licensed Agency.

4. An Agency shall not transfer or assign an operating certificate.

5. The Agency shall post a facility's current operating certificate in a conspicuous location visible to the public within the facility.

6. An operating certificate expires at the end of the agency's regular licensing year, or as described in R21-7-111 for a provisional license.

C. A license and all operating certificates associated with the license expire upon a change in ownership, unless the Department approves an amendment to the license. For the purpose of this Section, a "change in ownership" includes the following events:

1. Sale or transfer of an Agency or facility;

2. Placement of the Agency in the control of a court appointed receiver or trustee;

3. Change in the composition of the partners or joint ventures of an Agency organized as a partnership;

4. Sale or transfer of an ownership interest or stock of a corporate Agency; or

5. Loss of an Agency's nonprofit status.

D. A license issued under this Chapter may not satisfy a Child Welfare Agency's minimum contractual requirements.

R21-7-107. Child Welfare Agency Initial License Application Package

A. The applicant shall indicate on the application provided by the Department whether the applicant is applying for a Child Placing Agency license or a residential group care facility license, including a shelter care facility.

B. The applicant shall submit a complete application package that contains the information and supporting documentation listed in this Section.

1. Identification and background information for the agency, facility, and administrators, on an application provided by the Department:
   a. Name, address, telephone number, and email addresses for the Agency and each facility operated by the agency;
   b. Name, title, business address, and telephone number of:
      i. The CEO described in R21-7-131;
      ii. The Program Director described in R21-7-131;
      iii. The person with delegated authority to act when the CEO is absent;
      iv. The person designated to supervise the operations of each separate facility described in R21-7-131;
      v. Any person holding ownership interest in the Agency; and
      vi. The Agency and facility medical directors, if applicable;
   c. The educational qualifications and work history for each person identified in subsection (B)(1)(b), with that person's attached resume, employment application containing a professional history, or curriculum vitae;
   d. A list of the Agency's governing body described in R21-7-118;
   e. A list of licenses or certificates for provision of medical or social services, currently or previously held by the applicant or any person listed in subsection (B)(1)(b), including those held in this state or another state or country, and the date the person held each license or certificate;
   f. A written description of any proceedings for denial, suspension, or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social or human services, pending or filed, or brought against the applicant or a person listed in subsection (B)(1)(b), including those held in this state or another state or country;

g. A written disclosure of civil and criminal court proceedings in which the applicant or a person listed in subsection (B)(1)(b) has been a party, including:

i. Lawsuits,

ii. Dependency actions including:

(1) Removal of a dependent,

(2) Voluntary relinquishment,

(3) Suspension of custody, or

(4) Termination of parental rights;

iii. Charges of child abuse or neglect;

iv. Child support enforcement proceedings within the last five years;

v. Bankruptcy within the last five years;

vi. Adoption; and

vii. Any other court proceedings; and

h. The licensing history of any individual detailed in R21-7-118(C) and person listed in subsection (B)(1)(b) if that person has ever applied to be certified or has been licensed in any state to provide care to a child or to a vulnerable adult.

2. Demonstration of Need, as described in R21-7-104(E)(2). The applicant for a Child Welfare Agency license shall fill an unmet need in the community to serve children.

a. Describe the proposed geographical area, the target population, and demographics of the children it intends to serve; and

b. Demonstrate the ability to serve the proposed population.

3. Business organization

a. An organizational chart for the Agency and each separate facility, showing administrative structure, lines of authority, and staff;

b. Business organization documents appropriate to the applicant, as follows:

i. Corporate entities. An incorporated Child Welfare Agency shall provide the Department with a copy of the Articles of Incorporation, Bylaws, and the Certificate of Incorporation and Certificate of Good Standing issued by the Arizona Corporation Commission.

ii. A Limited Liability Company (LLC) shall provide the Department with a copy of the Articles of Organization and a Certificate of Good Standing issued by the Arizona Corporation Commission.

iii. A Partnership shall provide the Department with a copy of the Partnership Agreement and any other documents related to the Child Welfare Agency's formation and governance; and

c. A statement as to whether the applicant is for-profit or certified by the U.S. Internal Revenue Service (IRS) as not-for-profit and a copy of the IRS certification as a not for profit.

4. Staff

a. A list of the applicant's staff on the form provided by the Department.

b. Evidence that staff complies with A.R.S. § 46-141 and this Chapter.

c. For any staff whose primary residence is in the facility or on the premises under Article 2 of this Chapter include:

i. The name and date of birth of any person residing with a staff;

ii. Evidence that any adult residing with a staff at the facility or on the premises has an Arizona Level One fingerprint clearance card, a Central Registry Check, and the information required in R21-7-104 and R21-7-206;

iii. Evidence that any adult residing with a staff is free from communicable diseases posing a danger to children in care under R21-7-206;

iv. The custodial relationship between the staff and any child who resides on the premises; and

v. Evidence that any staff's child who resides on the premises has current immunizations based on the Centers for Disease Control and Prevention recommended immunization schedule.

5. Financial Stability

a. A certificate of insurance, or letter of commitment from an insurer, showing that the applicant has insurance coverage required by R21-7-128;

b. Verifiable documentation of funds available to pay start-up costs; the funds shall be in the form of cash or written authorization for a line of credit;

c. Verifiable documentation of funds available to pay operating expenses for the first three months of operations; the funds shall be in the form of cash or written authorization for a line of credit;

d. Verifiable documentation of financial resources to operate under the proposed operating budget for the remaining nine months of the licensing year. The resources may include:

i. Cash;

ii. Contracts for placement;

iii. Donations;

iv. Grants; and

v. Authorization for a line of credit; and

e. Resources shall not include:

i. Payday Loans;

ii. Title Loans; and

iii. Promises to pay without verifiable documentation of funds.

6. Program

a. Curriculum and materials, as related to the Agency's program.

b. Program description of the Agency's program and services addressing the following areas:

i. Goals and objectives;

ii. All services the applicant intends to provide;

iii. Any organization from which the applicant will seek accreditation;

iv. The demographics of the children the applicant plans to serve; and

v. The applicant's primary source of referrals, consistent with the applicant's demonstration of need.

c. The program description for a residential group care facility shall include the following areas:

i. For each facility, the number of children the applicant will serve, including the children's age, gender, special needs, or children with specific behavioral issues;

ii. A general description of the number and qualifications of the applicant's executive and direct care staff including the staff-child ratio per living unit, during a 24-hour day, for a seven-day week;

iii. Educational activities, including the form of on-campus educational programs the applicant will offer, and a copy of Arizona Department of Education and School District approval, if also operating a school;

iv. Recreational activities;

v. Food and nutrition, with sample menus;

vi. Behavior management practices;

vii. Religious practices;

viii. Medical services;

ix. The frequency and method by which the applicant will provide or offer psychiatric, psychological, or counseling services;

x. Whether the applicant will utilize the child in care's independent insurance; and

xi. Whether the applicant will employ or contract behavioral health practitioners; and

d. The program description shall indicate if any area specified in subsection (b) and (c) are not applicable.

7. Samples of all documents, forms, and notices that the applicant will use with or provide to children placed with or by the Agency, the parents and guardians of those children, and the persons and entities who place children.
8. A sample file the applicant will use for the personnel records required by R21-7-129, and the child in care's record as required by R21-7-121.
9. The applicant's internal policies, procedures, and operations manual.
10. Job description summary for all positions within the agency to include education and work experience required for each position.
11. Physical site and environment:
    a. Documentation showing that the local zoning authority verifies that each Agency facility complies with all applicable zoning requirements;
    b. Fire safety inspection report from the state fire marshal or a local fire department inspector for each facility when required by the local jurisdiction;
    c. Any other inspection certificates, inspection reports, or building occupancy certificates required by the local jurisdiction.
    d. Gas equipment inspection report for applicants under Article 2 of this Chapter.
12. A written plan for orientation and training for staff and includes a method for the agency to evaluate the staff's comprehension of the orientation and training and conforms to R21-7-132.
13. Miscellaneous:
    a. The notarized signature of the Agency CEO or person submitting the application, attesting to the truthfulness of the information contained in the application; and
    b. The date of application.

C. The applicant shall submit the Agency's policy and procedures.

D. The Department may require the applicant to provide additional information, including a signed form permitting a specifically named person or entity to release information to the Department, if any of the following applies:

1. To determine the applicant's fitness to hold a license or an operating certificate,
2. The ability to perform the duties of the licensee as prescribed in this Chapter, or
3. The ability to fulfill the requirements prescribed in the applicant's policy, procedure, and program description.

R21-7-108. License Renewal Requirements

A. No earlier than 90 calendar days and no later than 60 calendar days prior to the expiration date of a license, an Agency may apply for renewal of its license and any operating certificate.

B. The Department may treat an Agency's failure to apply timely for renewal as a voluntary closure under R21-7-117.

C. The Agency shall submit a complete renewal application on a form provided by the Department.

D. With a renewal application, the Agency shall also submit the following documentation:

1. Evidence of financial stability in compliance with R21-7-104;
2. A certificate of current insurance coverage as prescribed in R21-7-128;
3. Evidence of a passing physical site and environmental reports:
    a. Fire inspection report from the state fire marshal or local fire department inspector for each facility when required by the local jurisdiction;
    b. Any other inspection certificates, inspection reports, or building occupancy certificates required by the local jurisdiction; and
    c. Gas equipment inspection report for applicants under Article 2 of this Chapter.
4. Agency identification of and the following background information for the Agency, facility, and administrators:
    a. Name, address, and telephone; email for the Agency and each facility operated by the Agency;
    b. Name, title, business address, and telephone number of:
        i. The CEO for the Agency described in R21-7-131;
        ii. Program Director role as prescribed in R21-7-131;
        iii. The person with delegated authority to act when the CEO is absent;
        iv. The supervisor in charge of each separate facility;
        v. Any person holding ownership interest in the Agency; and
        vi. Agency and facility medical directors, if applicable;
    c. A list of the members of the Agency's governing body if applicable, described in R21-7-118;
    d. Any changes in licenses or certificates by the applicant or any person listed in subsection (D)(4)(b);
    e. A written description of any proceedings for denial, suspension, or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (D)(4)(b), including those held in this state or another state or country; and
    f. A written disclosure of any new or previously unreported civil and criminal court proceedings as outlines in R21-7-107(B)(1)(g) in which the applicant or a person listed in subsection (D)(4)(b) has been a party, including outcomes or updates to previously reported civil or criminal litigation;

5. An organizational chart for the Agency and each separate facility, showing administrative structure, lines of authority, and staff;
6. A list of all applicant's staff on a form provided by the Department;
7. For any staff whose primary residence is at the facility, the information outlined in R21-7-107(B)(4);
8. An annual written report evaluating the Agency's achievement of the goals and objectives described in its application;
9. Copies of all written complaints the Agency has received about its performance at any facility and the Agency's response to the complaints. This does not include any licensing complaints investigated by the Department during the expiring licensing year;
10. A written description of any changes in program services or the children served by the Agency; and
11. A current list of contracts related to the Child Welfare Agency license.

E. The Agency shall comply with the annual Central Registry Check as prescribed in R21-7-104(D)(6).

R21-7-109. Time Frames; Administrative and Substantive Completeness Review

A. The Department shall review an initial, renewal, or amendment application and render a licensing decision within the required time-frames described in this Section.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the:
1. Applicant submits the application, and
2. Required documentation listed in this Chapter.

C. The Department shall complete an administrative review within 45 calendar days of receiving the information in subsection (B). The Department shall conduct an administrative completeness review to determine whether all required documentation and information has been submitted within the 45 calendar days administrative review time-frame:
1. If the application package is complete, the Department shall send a Notice of Administrative Completeness to the applicant and conduct the substantive review; or
2. If the application is incomplete, the Department shall send a Notice of Incomplete Application to the applicant containing a list of items and information needed to complete the application.
   a. The applicant shall have 30 calendar days from the date on the Notice of Incomplete Application to supply the missing items or information to the Department.

b. The time-frame for the administrative completeness review shall be suspended from the date the Department issues the Notice of Incomplete Application to the date the Department receives the missing item or information.

c. If the applicant does not supply all of the requested items or information within 30 calendar days of the date of the Notice of Incomplete Application, the Department may close the application.

d. If the applicant supplies all of the required items and information to the Department within 30 calendar days, the Department shall conduct a substantive review of the application.

D. Within 30 calendar days following the conclusion of the administrative review of an application, the Department shall complete a substantive review to evaluate the applicant's fitness for licensure. Within the 30 calendar days substantive review time-frame, the Department shall:

1. Conduct inspections as described in R21-7-105;
2. Complete a review of licensing requirements under this Chapter; and
3. Request that the applicant provide additional information if needed to evaluate the suitability of the applicant for licensure.
   a. The applicant shall have an additional 30 calendar days from the date of the request, to provide the information to the Department.
   b. The time-frame for the substantive review shall be suspended from the date the Department requests additional information to the date the Department receives the information.

E. Within an overall time-frame of 75 calendar days, not including suspended time-frames, the Department shall:

1. Complete an administrative review of an application,
2. Complete a substantive review of an applicant's fitness, and
3. Notify the applicant of the decision to grant or deny the application.

Process	Responsible Party	Time-frame for Completion
Apply for renewal of license	Applicant/Licensee	90 calendar days and no later than 60 calendar days prior to the expiration of license
Administrative completeness review	Department	Maximum of 45 calendar days

Respond to the Notice of Incomplete Application	Applicant/Licensee	Maximum of 30 calendar days (overall time-frame is suspended during this time)
Substantive review	Department	Maximum of 30 calendar days
Respond to request for additional information to evaluate fitness, includes any corrections cited during an inspection of the facility	Applicant/Licensee	Maximum of 30 calendar days (overall time-frame is suspended during this time)
Overall time-frame for a licensing decision	Department	Maximum of 75 calendar days

R21-7-110. Licensing Decision

A. The Department shall issue a written licensing decision within the time-frames listed in R21-7-109.

B. The Department shall issue a license if the Department determines that an applicant or licensee is in full compliance with all applicable licensing requirements in this Chapter.

C. The Department may issue a provisional license as described in R21-7-111 if the applicant is in substantial compliance with non-safety licensing requirements.

D. The Department may issue a license if the licensee is in substantial compliance based on information available during an investigation.

E. The Department shall notify the Agency of the licensing decision.

F. The Department may restrict or limit the license, including the capacity, age, or gender of children that may be placed in residential group care facility.

G. The Department may renew an Agency license for a facility in the same location as the Agency, but deny renewal of an operating certificate for one or more facilities in separate locations.

H. If the Department denies a license based on noncompliance to correct deficiencies an applicant or group of applicants, made up of one or more of the same persons, shall not re-apply for 180 calendar days after receipt of a licensing denial notice. Upon reapplication:

1. The applicant or group of applicants shall provide evidence to the Department that the applicant has corrected the deficiencies identified in the denial notice.
2. The Department shall deny any reapplication without further evaluation if the applicant or group of applicants has not provided evidence that the Agency has corrected the deficiencies.

3. An applicant or group of applicants shall not reapply for another 180 calendar days after each subsequent denial based on its noncompliance to correct deficiencies identified during the licensing process.

I. The Department may deny the application if the applicant fails to demonstrate the need for the services. If the Department denies an applicant solely based on a lack of demonstrated need for a Child Welfare Agency, the Department's denial shall not negatively impact any future application the applicant submits for Child Welfare Agency licensure.

J. A Child Welfare Agency is limited to the capacity, age, gender, and other conditions or restrictions specified on the license and operating certificate.

R21-7-111. Provisional License

A. The Department may issue a provisional license on an application when:

1. There is a demonstrated need for the services;
2. An agency is temporarily unable to conform to all licensing standards, including payment of fees as described in R21-7-136;
3. The deficiencies are minor, correctable, and not potentially injurious to the safety or welfare of a child in care; and
4. The agency agrees to correct the deficiency or deficiencies.

B. The Department shall not issue a provisional license for longer than six months.

C. The Department shall not renew a provisional license.

D. The Agency shall cooperate with the Department to develop a written Corrective Action Plan prior to the issuance of a provisional license.

E. An Agency issued a provisional license shall comply with the terms of the Corrective Action Plan.

F. If an agency receives a provisional license and the provisional license is later converted to a regular license, the regular license expires one year from the issuance of the provisional license.

G. The Department's decision to issue a provisional license is not appealable.

H. If the Department denies a regular license when the provisional license expires, the Department shall send a notice of adverse action.

R21-7-112. Alternative Method of Compliance

A. The Department, after consultation with the Attorney General's Office, may permit a licensee to substitute an alternative method of compliance for a licensing requirement or objective prescribed in this Chapter and not otherwise required by law, if the following conditions are met:

1. The licensee seeking to achieve compliance through an alternative method proposes, to the satisfaction of the Department, that the licensee can satisfy the objective of the requirement through the alternative method; and
2. Allowing the licensee to achieve compliance through an alternative method will not jeopardize the health, safety, or well-being of a child in care.

B. Permission of an alternative method expires as prescribed in the written notice provided by the Department. The licensee shall request a renewal of the previously permitted alternative method of compliance at time of license renewal.

C. The Department is not obligated to permit an alternative method of compliance or to renew approval of the alternative method of compliance.

D. The Department shall document the alternative and the findings required by subsection (A) in the licensing file.

E. The Department may revoke the licensee's permission to comply through an alternative method if the Department finds that a condition listed in subsection (A)(1) or (2) is not met.

R21-7-113. Corrective Actions

A. When the Department finds a violation of this Chapter, the Department shall notify the Agency of the violation under this Section.

B. Corrective Action Plan

1. The Department may require the Agency to prepare a Corrective Action Plan for the Department's review and approval.
2. A Corrective Action Plan submitted by the Agency shall contain the following information:
   a. A list of the license violations requiring correction,
   b. How the Agency will remedy the violations,
   c. The time period for completing all corrective actions,
   d. Agency staff responsible for carrying out the corrective action plan, and
   e. A requirement for the Agency to send the Department a final report when all corrective action is completed.
3. A signature by the licensee or authorized representative and the date the Corrective Action Plan is signed.
4. The Department shall ensure that a Corrective Action Plan submitted by the Agency includes all requirements listed in subsection (B)(2).
5. The Department may require additional information prior to accepting the Corrective Action Plan submitted by the Agency.

6. The Department may monitor the Agency's progress in completing the Corrective Action Plan.

C. The Department shall notify the licensee of a violation through a Directive Corrective Action Plan. The notification shall include:

1. The rule violated;
2. The expected resolution of the violation;
3. The expected evidence to prove that the agency has complied; and
4. The expected date the violation is to be remedied.

D. At any time, the Department may conduct an announced or unannounced inspection of the Agency or facility to monitor corrections required by a Corrective Action Plan or Directive Corrective Action Plan.

R21-7-114. Denial, Suspension, and Revocation of a Licensing Application, License, or Operating Certificate

A. The Department may deny a licensing application, suspend or revoke any license or operating certificate when:

1. An applicant or licensee refuses or fails to comply with the applicable licensing requirements of this Chapter, Arizona state or federal laws, and city or county ordinances or codes;
2. An applicant or licensee refuses to cooperate with the Department in providing information required to determine compliance with the applicable licensing requirements of this Chapter, and the Department's efforts to ensure compliance;
3. An applicant or licensee misrepresents or fails to disclose information to the Department regarding licensing requirements including management or staff qualifications, experience, or performance of duties;
4. An applicant or licensee does not comply with A.R.S. § 46-141. This does not include individuals who have received a good cause exception under A.R.S. § 41-619.53 and has been issued a Level One fingerprint clearance card by the Arizona Department of Public Safety;
5. An applicant or licensee knowingly allows an adult to reside at the facility without a valid Arizona Level One fingerprint clearance card or has been convicted of or is awaiting trial on the criminal offenses listed in A.R.S. §§ 46-141 and 41-1758.07;
6. An applicant or licensee allows an adult to reside at the facility who has a substantiated report of child abuse or neglect;
7. The licensee fails to cooperate in developing a Corrective Action Plan after a request by the Department, or fails to comply with a Directive Corrective Action Plan issued by the Department within the required time period;

8. An applicant or licensee is unable or unwilling to provide for the physical, emotional, social, educational, or psychological needs of children in care; or

9. An applicant or licensee had a license or certification to provide care to a child or vulnerable adult denied, suspended, or revoked.

B. The Department shall deny, suspend, or revoke a license when an Agency:

1. Knowingly retains staff who have been convicted of or are awaiting trial on the criminal offenses listed in A.R.S. § 41-1758.07;

2. Allows an adult other than those described in subsection (C), who has been convicted of or is awaiting trial on the offenses listed in A.R.S. §§ 46-141 and 41-1758.07, to reside at a facility; or

3. Allows any staff or any other adult residing at the facility, who has committed an offense listed in A.R.S. §§ 46-141 and 41-1758.07, to have contact with children in care.

C. The Department may deny or revoke a Child Welfare Agency license if the Agency hires or retains any staff convicted of or is awaiting trial on any offense that would preclude the issuance of a Level One Fingerprint clearance card under A.R.S. § 41-1758.07(B) or (C).

D. The Department may deny or revoke a Child Welfare Agency License if the Agency hires or retains any staff determined to have a pending or substantiated DCS Report for Investigation on the Central Registry for a disqualifying act and has not received a good cause exception under A.R.S. § 41-619.53.

E. The Department may deny, suspend, or revoke a license if the applicant or licensee of the Agency:

1. Is listed as a perpetrator in a substantiated report of abuse or neglect on a child or vulnerable adult; or

2. Is the subject of an open DCS Report for investigation.

F. The Department may initiate an adverse action if the Department concludes that:

1. A violation of licensing requirements is not correctable;

2. A violation of licensing requirements poses a risk to the health, safety, or well-being of a child in care;

3. The Agency has a history or pattern of similar violations with licensing and Child Welfare rules, statutes, or local codes, as evidence that the applicant or licensee is unable or unwilling to meet the needs of children in care;

4. A violation is ongoing and was not corrected through corrective action; or

5. The Agency has a pattern or history of failing to provide safe care or complying with licensing requirements.

G. The Agency shall not accept any additional placements until the process of adverse action is finalized and the Agency has exhausted all appeal rights.

H. The Department may reinstate a suspended license or discontinue a process of adverse action if the Department determines the licensee has corrected the reason for the adverse action.

R21-7-115. Adverse Action; Procedures

A. The Department shall give the licensee written notice of an adverse action by certified mail.

B. The Department may consider the following factors when making a determination for an adverse action:

1. The nature of the violation,
2. Any history of prior violations,
3. Licensee's implementation and compliance with a corrective action, and
4. Other comparable factors demonstrating the licensee's ability and willingness to follow through with corrective actions to avoid future violations.

C. The notice shall specify:

1. Reasons supporting the action;
2. The action taken;
3. The sections of law, rule, or ordinance justifying the action;
4. The procedures by which an applicant or licensee may appeal the adverse action taken and the time frame to appeal; and
5. A description of the applicant or licensee's right to request an informal settlement conference as prescribed in A.R.S. § 41-1092.03.

D. A suspension of the license or an operating certificate shall detail the finding of a health, safety, or welfare concern that imperatively requires emergency action as prescribed in A.R.S. § 41-1064.

R21-7-116. Appeals

A. An applicant or licensee shall have the right to appeal an adverse action under the timeframes and procedures as outlined in A.R.S. § 8-506.01 and A.A.C. Title 21, Chapter 1, Article 3.

B. If a child in care has been removed from the Child Welfare Agency because of a health, welfare, or safety issue, the child shall not return to the Child Welfare Agency while the appeal is pending.

C. The following are not appealable:

1. Corrective Action Plan;
2. Parameters specified by the Department on the license or operating certificate, including the capacity, age group, gender, and other conditions or restrictions; and
3. Denial or revocation of approval for an alternate method of compliance.

R21-7-117. Voluntary Closure

A. An applicant or licensee may voluntarily withdraw an application for licensure or close the license by submitting written notice to the Department.

B. If there are no children placed or being served by the licensee the withdrawal or closure shall be effective on the date selected by the licensee or, if no date is selected by the licensee, the date of notification to the Department.

C. If the licensee has a child in care, a licensee shall notify the Department and the Placing Entity 30 calendar days before the voluntary closure date.

D. The licensee's written notice shall contain the following information:

1. The reason for the closure; and
2. If currently licensed, the date by which the agency will close.

R21-7-118. Governing Body

A. The licensee shall have a governing body to oversee or advise the operations, policies, and practices of the Agency and its facilities. The governing body shall be:

1. The Board of Directors for an Agency that is a corporation, or other entity that has a board of directors; or
2. For an Agency that is not a corporation, the individual who owns the Agency, a group of owners, partners, or the members of a limited liability company that govern the Agency as required by this Section.

B. The governing body shall:

1. Review, approve, and adopt a written scope of services;
2. Ensure that the licensee provides the services described in the licensee's program description;
3. Review and approve Agency policy and procedures, including any amendments or updates, prior to implementation and submission to the Department;
4. Adopt an annual budget of anticipated income and expenditures necessary to provide the services described in the licensee's program description;
5. Review the licensee's annual financial audit report;
6. Review and approve a policy and procedure for selection and retention of staff sufficient to operate the Agency and its facilities in accordance with this Chapter;
7. Meet at a minimum of once a year;
8. Develop criteria and written procedures for selection of the governing body members and the CEO;

9. Employ a CEO who meets the qualifications prescribed in R21-7-131, to whom the governing body, if a corporation, shall delegate responsibility for the daily administration and operation of the agency; and

10. Review the annual summary report submitted by the CEO as outlined in R21-7-119.

C. The Agency shall maintain a list of the governing body's members. The list shall include each member's name, address, phone number, term of membership, position in the Agency, and relationship to the licensee, if any. The Agency shall provide the list to the Department upon request or as required during an application process.

D. The Agency shall report to the Department all changes in composition of the governing body or officers of the Agency, in writing within 30 calendar days of a change.

E. The Agency shall ensure all governing body members comply with the requirements of A.R.S. § 46-141 and provide evidence of a valid Arizona Level One fingerprint clearance card.

R21-7-119. Quality Management

The Chief Executive Officer shall:

1. Develop and implement a written plan for ongoing quality management that, at a minimum, includes a method to:
   a. Identify, document, and evaluate incidents;
   b. Collect data to evaluate services provided to children;
   c. Evaluate the data collected to identify a concern about the delivery of services related to children in their care; and
   d. Make changes or take action as a result of the identification of a concern about the delivery of services related to children in their care;
2. Submit an annual summary report to the governing body that includes:
   a. An identification of each concern about the delivery of services related to children in 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 children in care;
3. Maintain the report required in subsection (2) and the supporting documentation for the report as indicated in R21-7-122; and
4. Submit the plan for ongoing quality management and the annual summary report to the Department at license renewal.

R21-7-120. Child's Service Plan: Preparation; Review; Planning Participants

A. A child in care shall have a personalized service plan tailored to the child's unique background, strengths, and needs created by the licensee unless otherwise provided. The plan shall include, at a minimum, the following information:

1. A description of services the child is to receive while in care, including services to ready the child for discharge from the program;
2. Goals and objectives for the child;
3. Dates and timelines for achieving each goal and objective;
4. Recommendations for any care after discharge;
5. Identification of persons invited to participate in service planning;
6. The names and, if available, signatures of the persons who participated in service planning; and
7. Identification of persons responsible for implementing the service plan, with an explanation of each person's role for after the child's discharge.

B. The licensee shall review and update a child's service plan at least every 90 calendar days.

C. The licensee shall invite, or delegate the responsibility for inviting, at least the following persons to participate in development and review of the service plan:

1. A representative from the Placing Entity;
2. A representative of the Child Welfare Agency, if applicable;
3. The child, if the child's presence is developmentally appropriate; and
4. The child's parent or guardian.

D. The licensee shall allow planning participants to participate in service planning through the following methods:

1. Attendance at a planning meeting,
2. Submission of a written report or documentation,
3. Review and approval of the plan through signing and dating, or
4. Audio or audio-visual teleconference.

R21-7-121. Records and Reports: Contents; Maintenance; Destruction

A. The licensee shall maintain and report accurate data on children receiving services, and staff employed, as requested by the Department.

B. The licensee shall maintain a current, separate record for each child in care in the following manner:

1. The record shall be readily accessible to the child's parent, guardian or persons providing services to the child unless prohibited by law or court order and shall include at least the following information:
   a. The name, gender, race, religious preference, birthdate, and birthplace of the child;

b. The name, address, telephone number, marital status of the child's parents, and any court orders regarding custody;

c. The date of admission and source of referral; and

d. The name, address, telephone number, and relationship to the child of the person with whom the child was living prior to admission, if other than the child's parent;

2. Each record shall be kept up-to-date, confidential, consistently organized, and contain the following information:

a. All documents related to the child's referral and admission of the child to the facility;

b. Documentation of the current custody and guardianship of the child;

c. The child's court status, if applicable;

d. The terms of the child's probation, if applicable;

e. Consent forms signed by the Child Placing Agency or authorized person at the time of placement, allowing the licensee to authorize necessary medical care, medications, routine tests, and immunizations;

f. Contact information for the child's primary care physician, primary dental physician, behavioral health provider, and any other medical professional or health care provider involved in the child's care;

g. The Agency's service plan for each child in their care and all reviews, revisions, notes, and updates reflecting the child's goals, family's goals, and Child Placing Agency's goals, if applicable, and progress towards achievement of goals;

h. Education records and reports;

i. Vocational training and employment records, if applicable;

j. Treatment and clinical records and reports; and

k. The discharge summary required by R21-7-215; and

3. The licensee shall maintain health records for each child in care, including the child's medical, dental and behavioral health insurance information. The records shall include the following information, if available to the licensee:

a. Any medical records provided to the licensee by any medical, dental, or behavioral health provider, the Department, parent or guardian, or another source;

b. The name of the person or Agency bearing financial responsibility for the child's health care;

c. The child's past medical history and current medical record while in care, including:

i. Well-child visits;

ii. Diagnosis;

iii. Visit or after care summaries;

iv. Immunizations administered in the past and those provided while in care;

v. Serious illness or injury;

vi. Surgery;

vii. Allergies;

viii. Adverse drug reaction;

ix. Record of vision and hearing screening and physical and dental examinations;

x. Record of any treatment provided for a specific illness or medical emergency, including the name and location of the medical personnel who provided treatment;

xi. Developmental history;

xii. Medication history, in the past and provided while in care;

xiii. History of any alcohol or substance abuse or treatment;

xiv. Record of any medication errors; and

xv. Documentation showing the licensee's efforts, consistent with the terms of the placing agreement, to obtain glasses, hearing aids, prosthetic devices, corrective physical or dental devices, or any other health equipment recommended by a child's attending medical professional, or dentist.

4. Documentation of reasonable efforts to obtain all required information.

C. Licensee shall transfer the medical records to the Department if the child is in the custody of the Department or to an authorized person when the child in care is discharged from the licensee's care. Licensee shall maintain proof of transfer in the child's record.

D. Licensee shall ensure all record entries are made in ink or electronically. The licensee shall require staff to date and legibly sign entries in a child's records. The licensee shall ensure records are properly maintained, secured, and protected against loss or corruption.

E. If the licensee maintains a child's records in more than one place, the licensee shall:

1. Identify, in one location that is readily accessible for inspection by the Department, the location of all parts of the record; and

2. Consolidate all records and notes into one case file, at one location, within 15 calendar days following either:

a. A request for consolidation from the Department; or

b. The date of the child's discharge from the facility.

F. The licensee shall maintain a child's record for the longest of the following time periods:

1. Five years after the child's last discharge from the licensee's care;

2. Three years after the child's 18th birthday; or

3. Another time period specified by applicable law or contract.

R21-7-122. Confidentiality

A. The Department shall maintain the confidentiality of any applicant or licensee and facility address under A.R.S. § 8-502.

B. The Department shall maintain the confidentiality of a source filing a licensing complaint.

C. Except as otherwise allowed under A.R.S. § 8-807 or otherwise authorized by law, a licensee's records concerning a child in their care and the child's family are confidential and the licensee shall not disclose or knowingly permit the disclosure of confidential information.

D. The Agency shall keep all child records and Agency financial records in a locked, fire-resistant file or in a password protected electronic filing format. The Agency shall ensure records are properly maintained, secured, and protected against loss or corruption. The Agency shall limit access to child records to authorized staff and to the Department.

E. The licensee shall maintain written policy and procedures to keep the Agency's records secure in a manner that preserves confidentiality and prevents loss, tampering, or unauthorized use. The policy and procedures shall:

1. Be consistent with any laws applicable to the specific records; and
2. Cover the following:
    a. The manner in which children's records are maintained, stored, and destroy;
    b. Identification of the staff who:
        i. Supervise the maintenance of records,
        ii. Have custody of records, and
        iii. Have access to records;
    c. The persons to whom records may be released and under what circumstances records may be released, including release of information to custodial and non-custodial parents and guardians;
    d. The protection of children in care against public identification; including through social media; and
    e. Photography, and audio or audio-visual recording, which shall include;
        i. Circumstances under which photographs and audio or audio-visual recordings are created;
        ii. Methods and timeframe of storage;
        iii. Circumstances under which the licensee will access the material;
        iv. Who may access the material;

v. Location in and outside of the facility in which photography and audio or audio-visual recording is prohibited; and

vi. Access by the Department.

F. Before using personally identifiable information for publicity, fundraising, or research, a licensee shall obtain:

1. A written consent to release, from a parent or guardian; or
2. A court order, if the child is a ward of the court.

G. The licensee may release personally identifiable information about a child in care or family to a person who requires the information to treat or provide services to the child unless the release is prohibited by law.

H. A consent to release of information shall include:

1. The name of the person or entity to whom the information is to be released;
2. A description of the information to be disclosed;
3. The reason for disclosure;
4. The expiration date of consent, not to exceed six months from date of signature; and
5. The dated signature of the person or Placing Entity's representative authorizing the release.

I. Notwithstanding any other provision of this Chapter, in a medical emergency, the licensee shall promptly release necessary information to the person or entity providing the child in care with services related to the emergency.

J. Records Storage Space

1. The licensee shall maintain or have available a physical space for records storage that protects confidentiality and provides security against theft, unauthorized release, security breach, damage, and loss.
2. The records storage space may be a space for hard copy records, a server for electronic and digital records, or both.
3. The licensee shall lock all hard copy records and shall encrypt and password protect electronic records.
4. If the Agency contracts for storage space the contract shall include:
   a. A provision that all data is owned jointly by the licensee and the Department and that a contractor may not use or disseminate the data in any way;
   b. A provision that the contractor shall return all data immediately upon cessation of the contract; and
   c. A provision requiring security against theft, unauthorized release, security breach, damage, and loss of records.

K. The licensee shall comply with all record retention laws and the Department's record retention schedules.

L. The licensee shall destroy records in a manner that maintains confidentiality and shall comply with all applicable laws.

R21-7-123. Changes; Notification to the Department

A. The licensee shall notify the Department of the following changes at least 30 calendar days prior to the change:

1. Licensee's name;
2. A change in ownership, governing board member, or individuals identified in R21-7-107(B)(1)(b);
3. Plan to remodel a facility or administrative location;
4. Agency policy and procedure;
5. Agency program;
6. Change in profit or non-profit status; or
7. Any circumstance requiring an amendment to the license or operating certificate as prescribed in R21-7-124.

B. If a change in governing board member, CEO, or program director occurs without sufficient time for prior written notice, the licensee shall notify the Department as soon as the licensee is aware of the change, but no later than two workdays of the change.

C. The Department may request additional information or deny any proposed changes that are inconsistent with licensing requirements.

R21-7-124. Amendment; License; Operating Certificate

A. A Child Welfare Agency shall request an amendment to modify their license or operating certificate on the Department's prescribed application form for the following:

1. License type,
2. The parameters of the license or operating certificate as prescribed in A.R.S. § 8-505,
3. Relocation of an administrative location or facility,
4. Additional facility, or
5. Completed remodel of a facility or administrative location.

B. The Department may issue an amended license or amended operating certificate if the change does not cause the Agency or facility to be out of compliance with applicable statutes, local laws and relevant sections of this Chapter.

C. The Department shall not issue an amended license for an Agency or an amended operating certificate for a facility that has moved to a new location or remodeled until the Agency or facility:

1. Provides the information listed in R21-7-123;
2. Corrects deficiencies from the Life Safety Inspection;
3. Corrects deficiencies from a site inspection;
4. Complies with physical site and environmental requirements:
    a. Documentation showing that the local zoning authority verifies that each Agency facility complies with all applicable zoning requirements;
    b. Fire safety inspection report from the state fire marshal or a local fire department inspector for each facility when required by the local jurisdiction;
    c. Any other inspection certificate, inspection report, or building occupancy certificate required by the local jurisdiction; and
    d. Gas equipment inspection report for applicants under Article 2 of this Chapter; and
5. Complies with fingerprinting and background checks under A.R.S. § 46-141 and R21-7-104 for any new staff and adults residing in a facility.

D. The Department's decision to either approve or deny the application shall be based on compliance with this Chapter.

E. An amended license or operating certificate expires at the end of the Agency's regular licensing term.

R21-7-125. Staff: Notification; Hiring; Changes; Monthly Report

A. Prior to the staff's start date the licensee shall:

1. Enter the information contained in the completed background check authorization form in the Department's electronic database;
2. Request a Central Registry Check for the staff through the Department's electronic database; and
3. Ensure the staff is in compliance with A.R.S. § 46-141.

B. The Department shall notify the licensee if the staff has a substantiated finding of child abuse or neglect or does not have a valid Level One fingerprint clearance card.

1. If the staff has a substantiated finding on the Central Registry, the licensee shall:
    a. For non-disqualifying act provide the Department within 72 hours of notification a written plan detailing the licensee's determination on employment including the staff's job responsibilities; or
    b. For disqualifying act where the staff has received a good cause exception as prescribed in A.R.S. §§ 8-804 and 41-619.57, provide the Department within one workday of notification a

written statement on a form provided by the Department detailing and the licensee's determination on employment including the staff's job responsibilities; or

c. For a disqualifying act where the staff has not received a good cause exception, provide the Department within one workday of notification a written statement on a form provided by the Department detailing the staff has been suspended or separated from employment with the licensee.

2. If the staff does not have a valid Level One fingerprint clearance card, the licensee shall provide the Department within 72 hours of notification a written statement on a form provided by the Department detailing the staff has been suspended or separated from employment with the licensee.

C. The licensee shall submit to the Department, on a monthly basis, a list of staff on a form provided by the Department.

D. The licensee shall enter any changes to employment, including separation, with the licensee in the Department's electronic database within five workdays from the date of the change.

R21-7-126. Emergency and Disaster Plan

A. An Agency shall have an emergency and disaster plan as required by A.A.C. Title 21 Chapter 8 Article 1.

B. An Agency shall make a copy of the emergency and disaster plan available upon the Department's request.

R21-7-127. Transportation

A. Vehicles

1. The licensee shall ensure that each vehicle used for the transportation of a child in care:
   a. Is mechanically sound and in good repair;
   b. Has heating and air conditioning units that work efficiently;
   c. Has documentation of regular, routine maintenance and repairs;
   d. Conforms to applicable motor vehicle laws;
   e. Carries first aid supplies;
   f. Carries emergency roadside supplies;
   g. Has equipment appropriate to the terrain and the weather; and
   h. Has current registration and insurance.
2. The licensee shall not allow the number of individuals in a vehicle used to transport a child in care to exceed the number of available seats and seat belts in a vehicle other than a bus. If the

vehicle is a bus, the licensee shall not exceed the maximum stated occupancy on the bus inspection certificate.

3. The licensee serving a non-ambulatory child in care or a child with a disability shall provide access to transportation that accommodates the child's special needs and disability.

B. Car Seats and Seat Belts

1. The licensee shall keep the correct number and type of child car seats at the facility appropriate for the ages of the children in their facility.
2. The licensee shall ensure that each car seat is properly installed prior to transporting any child requiring a car seat in accordance with state law.
3. The licensee shall ensure that each vehicle, except for a bus, used to transport a child has passenger safety restraints available and will utilize the safety restraints according to state and federal law.
4. The licensee shall ensure each child with a disability that prevents the child from maintaining head and trunk control while sitting is secured in a car bed, harness, or other device designed to protect the child during transportation.
5. The licensee shall ensure when a child is transported in a wheelchair, the child is properly secured with a floor-mounted seat belt, and the wheelchair is properly immobilized using lock-down devices.

C. The licensee shall not transport a child in a truck bed, cargo area, camper, or in a trailer attached to a motor vehicle.

R21-7-128. Insurance

A. The licensee shall procure and maintain, at all times, insurance coverage that provides protection against financial loss.

B. The licensee shall carry insurance per the terms of their contract. The following insurance coverages with limits of liability shall not be less than those stated below.

1. Commercial General Liability – Occurrence Form

   The policy shall include bodily injury, property damage, personal injury and contractual liability.

   a. General Aggregate $2,000,000
   b. Products – Completed Operations Aggregate $1,000,000
   c. Personal and Advertising Injury $1,000,000
   d. Damage to Rented Premises $500,000
   e. Each Occurrence $1,000,000

2. Business Automobile Liability.

a. The policy shall cover both bodily injury and property damage for any owned, hired, or non-owned vehicles used in the performance of licensee's operations.

b. Combined Single Limit (CSL) $1,000,000.

3. Worker's Compensation and Employers' Liability

a. Workers' Compensation: Statutory

b. Employers' Liability, each Accident $1,000,000

c. Disease:

i. Each Employee $1,000,000

ii. Policy Limit $1,000,000

d. This requirement shall not apply separately to a licensee that is exempt under A.R.S. § 23-901.

4. Professional Liability (Errors and Omissions Liability)

a. Each Claim $1,000,000

b. Annual Aggregate $3,000,000

c. The policy shall be endorsed to include coverage for sexual abuse and molestation in an amount not less than $500,000. The policy shall include this statement: "Sexual Abuse and Molestation coverage is included."

C. Licensee shall not allow its policies to be suspended, cancelled, materially changed, or to expire without 30 days' prior written notice to the Department.

D. Licensee shall provide the Department with verification of the above insurance coverages.

R21-7-129. Staff Management and Records

A. The licensee shall have written policy and procedures governing staff that describes:

1. How the licensee recruits, screens, hires, supervises, trains, retains, develops, evaluates, disciplines, and terminates;
2. How the licensee handles resignations;
3. A job title and description, for each position within the Agency and each facility;
4. The duties assigned to each position;
5. How the licensee handles grievances;
6. A method to assure privacy of records; and
7. How the licensee handles personnel issues.

B. The licensee shall employ an individual only after careful evaluation of the applicant including personal or professional references as to character, skills, knowledge, and experience.

C. The licensee shall provide all staff a copy of the person's own job description and a copy of, or allow access to, the licensee's policies and procedures.

D. The licensee shall maintain a personnel record for all staff. The record shall include the following information:

1. Application for employment including previous employment history;
2. Verification or documentation of reference checks as required in R21-7-130 and signed and dated by staff who completed the reference check;
3. Documentation of the highest level of education achieved. The documentation may include a copy of a diploma, equivalence certificate, or record of notes of calls to educational institutions;
4. Medical examination reports showing that direct-care staff is free from communicable diseases as required by R21-7-206;
5. Medical examination reports on any other adult residing at the facility showing that the adult is free from communicable diseases as required by R21-7-206;
6. Medical and immunization records for a child who resides at the facility, but is not a child in care, as required by R21-7-206;
7. Copies of applicable professional licenses, credentials, and certifications;
8. Documentation showing that the staff has read their job description, and acknowledges understanding of the functions and requirements of the position. The document shall include the dated signature of the staff, and shall also provide verification that the staff was given a copy of the job description;
9. Front and back copy of a valid Arizona Level One fingerprint clearance card as required by A.R.S. § 46-141 and R21-7-104;
10. Records of all orientation and training received during employment;
11. Signed documentation showing that the direct-care staff has read and agrees to abide by the facility's behavior management policies and procedures;
12. Signed documentation showing that the staff has read and agrees to abide by the duty to report child abuse or neglect as described in A.R.S. § 13-3620;
13. Documentation showing that the staff has a valid driver's license if transporting children;
14. Reports of all performance evaluations;
15. Documentation of any personnel actions or investigations;
16. If applicable, copy of the completed Central Registry form with evidence of submission of the form to the Department;
17. Dates the staff started and separated from employment; and

18. An Agency shall record, on a form provided by the Department, when a staff resigns, retires, or is discharged, the date and reason for termination.

E. The licensee shall keep personnel records for at least three years after the staff's separation from the licensee.

F. The licensee shall maintain the following records for all staff training:

1. Training provided by internal staff:
   a. Lesson plan or training outline that includes the class title, contact hours, learning objectives, and titles of video and audio materials used;
   b. Class roster that includes the instructor name, class title, location of training, trainee name, trainee initials, or signature to confirm attendance;
   c. Assessment Results; and
   d. Class materials including: PowerPoints, handouts, and student workbooks, and materials;
2. Training provided by external providers:
   a. Documented proof of attendance and successful completion; and
   b. Assessment results, if available; and
3. Verification of current adult and pediatric cardiopulmonary resuscitation (CPR) and first aid certification for direct care staff.

R21-7-130. General Qualifications for Staff

A. The licensee shall ensure that all staff are currently certified, registered, or licensed as required by state law and applicable to their position.

B. The licensee shall ensure that all staff certify, on notarized forms provided by the Department, whether the staff is awaiting trial on or has ever been convicted of any of the criminal offenses listed in A.R.S. § 41-1758.07.

C. For all staff, the licensee shall obtain and document at least two references as follows:

1. Current or most recent employment through reference checks; and
2. At least one reference from persons not related to the staff by blood or marriage, who can attest to the staff's character, knowledge, and skill.

D. The licensee shall ensure that:

1. Direct care staff is certified in adult and pediatric cardiopulmonary resuscitation (CPR) prior to providing direct care to children; and
2. Direct care staff is certified in first aid by the American Red Cross, the American Heart Association, the Arizona Chapter of the National Safety Council, or any other provider whose

program contains core elements similar to these entities, and contains a demonstrative component prior to providing direct care to children.

3. Training and certification solely provided on-line shall not be accepted.

E. The licensee may allow one staff to perform multiple functions or fill more than one position if:

1. The staff performing multiple functions is qualified for the jobs held; and
2. The licensee does not violate the applicable requirements of this Chapter.

R21-7-131. Standards; Qualifications for Specific Positions

A. All positions, including executive positions shall:

1. Conduct themselves professionally and ethically;
2. Comply with federal and state laws and rules, Agency policies and directives;
3. Immediately correct problems to ensure the safety of children in care;
4. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, or favoritism;
5. Be courteous, considerate, and prompt in interactions with the children in care and service providers including the Department;
6. Conduct themselves in a manner that will not bring discredit or embarrassment upon the Agency or the Department;
7. Use sound, professional and ethical judgment;
8. Be accessible to representatives of the Department, and other governmental agencies. As used in this subsection, "accessible" means readily available to answer questions and address problems or emergencies that arise, either personally or through a chain of command; and
9. Be considered as potentially having contact with children and shall:
   a. Obtain and maintain a Level One fingerprint clearance card and
   b. Obtain a Central Registry clearance check in accordance with the requirements of this Chapter.

B. The licensee shall have a CEO whose role is to oversee the Agency, and who:

1. Is responsible for general management, administration, and operation of the Agency according to this Chapter;
2. Ensures that:
   a. Each child in care receives necessary professional services including psychological; educational, medical and other services, as recommended by a professional in that field;
   b. Appropriately qualified staff render services to children in their care; and
   c. The Agency remains in compliance with all statutes and rules;

3. Shall have management experience and meet any other qualifications required by the governing body; and

4. Shall designate a qualified person to perform the CEO's responsibilities whenever the CEO is inaccessible.

C. The licensee shall have a Program Director whose role is to be responsible for the development, implementation and supervision of the Agency program and services, and who shall:

1. Be a resident of Arizona; and

2. Have at least one of the following sets of minimum qualifications:

   a. A master's degree in social work or a related area of study in the human services field from an accredited school;

   b. A bachelor's degree in social work or a related area of study in the human services field from an accredited school and two years' experience in the child welfare or child care services field; or

   c. At least six years' experience in the child welfare or child care services field.

D. The licensee shall have direct care staff whose role is to supervise, care for, and nurture a child in care and shall have at least:

1. A high school diploma or equivalency degree and one year experience in providing direct care to children; or

2. One year post-high school education in a program leading to a degree in the field of child welfare, human services, or other related field of study.

E. The licensee shall have a supervisor whose role is to supervise, evaluate, and monitor the work of the direct care staff and who shall:

1. Meet the requirements of direct care staff; and

2. Have at least an additional two years of any combination of the following:

   a. Paid child care or child welfare related experience, or

   b. Post-high school education in social work or a related field.

F. Any licensee that operates more than one facility shall designate a person to supervise the operations of each facility.

G. A person may hold multiple positions with an Agency as long as that person meets requirements of each position held.

R21-7-132. Orientation and Training for Staff

A. The licensee shall have a written policy approved by the Department for orientation and training of all staff in accordance with R21-7-107.

B. All staff shall receive initial orientation and training before independently performing the essential functions of their job and before direct care staff may supervise children alone.

C. The licensee's policy shall require staff to complete the initial orientation and training to include:

1. Training all staff on the following:
   a. The licensee's philosophy;
   b. The licensee's organization;
   c. The licensee's program;
   d. The licensee's practices;
   e. The licensee's goals;
   f. The licensee's policies and procedures;
   g. Identification and reporting children suspected to be victims of child exploitation, including sex trafficking;
   h. Mandatory reporting of suspected child abuse and neglect under A.R.S. § 13-3620;
   i. Any specific child care responsibilities outlined in the staff's job description; and
   j. Any new training required by the federal or state governments.
2. Training direct care staff on the following:
   a. Confidentiality,
   b. Client and family rights,
   c. Grievances,
   d. Emergencies and evacuations,
   e. Behavior management,
   f. Preventing and reporting child abuse or neglect,
   g. Recordkeeping,
   h. Medications,
   i. Infection control,
   j. Treatment philosophy,
   k. Adult and pediatric cardiopulmonary resuscitation (CPR) and first aid according to American Red Cross guidelines as prescribed in R21-7-130,
   l. Initial wellness screening for identified direct care staff,
   m. Trauma-informed care of children,
   n. De-escalation and any physical restraint practices used by the Agency and taught by an instructor certified, approved by the Department, and qualified under this subsection. An instructor is certified and qualified to train staff in de-escalation and physical restraint practices if:

i. The instructor's curriculum conforms to the requirements of this Chapter, state law, and who have experience in the actual use of interventions as opposed to administrative responsibility for such use; and

ii. The classroom instruction provided conforms to the requirements of this Chapter and state law. The training shall cover at a minimum intervention techniques, particularly addressing the risks and side effects that may adversely affect a child. The use of intervention includes hands-on or practical experience to be conducted by instructors;

o. Recognizing expected responses to and side effects of medications commonly prescribed for children in care,

p. Recognizing the signs and effects of:

i. Substance use and abuse,

ii. Common childhood illness, and

iii. Communicable disease,

q. Emergency admissions process if applicable to the licensee's services,

r. Writing and submitting incident reports, and

s. Creating normalcy for children in their care. The training shall address best practices for meeting the diverse needs for each individual child.

D. The licensee's ongoing training plan shall require that:

1. All staff receive annual training to include the following topics:

a. Mandatory reporting,

b. Relevant portions of Arizona Administrative Code,

c. Agency and Department policies and procedures,

d. Responsibilities appropriate to the staff's duties with the Agency, and

e. Any updates to topics covered in prior trainings the staff has received.

2. All direct care staff shall receive annual training which shall include the following topics:

a. Child management techniques;

b. Positive discipline, crisis intervention, and behavior management techniques;

c. De-escalation, physical restraint techniques refresher to maintain currency in knowledge and recent technical trends;

d. Health care issues and procedures, including mental health;

e. Attachment and separation issues for a child and family;

f. Sensitivity towards and skills related to cultural and ethnic differences;

g. Sensitivity towards and skills related to children who identify as part of the lesbian, gay, bisexual, transgender, or questioning community;

h. Strategies for addressing safety concerns and challenges faced by children who identify as part of the lesbian, gay, bisexual, transgender, or questioning community;

i. Self-awareness, values, and professional ethics;

j. A child's need for permanency and how the Agency works to fulfill this need;

k. Trauma informed care; and

l. How to promote normalcy for children in their care.

R21-7-133. Monitoring

A. The Department shall monitor the ongoing operations of an Agency and its facility.

B. The Department's monitoring activities may include the following:

1. Announced and unannounced inspections or observations of an Agency or a facility, including both the premises and internal operations, books, records, policies, procedures, logs, manuals, files, inspection reports, certificates, and any other document required by this Chapter; and
2. Interviews with a child, client, staff, management, or other person with information about the Agency.

C. The licensee shall cooperate with the Department's monitoring activities.

R21-7-134. Licensing Complaint

A. If the Department receives a licensing complaint about a licensee, Agency, or facility, the Department shall ask the complaining party to submit the licensing complaint to the Department's Centralized Intake Hotline. The Department shall investigate a licensing complaint under this Section when the complaining party does not contact the Centralized Intake Hotline.

B. The Department shall refer a licensing complaint involving an allegation of child abuse or neglect to the Department's Centralized Intake Hotline as required by A.R.S. § 13-3620 for investigation under A.R.S. § 8-455.

C. The Department shall investigate a licensing complaint about a licensee through one or more of the following methods:

1. Telephone contact with the licensee,
2. Interviews with the complaining party,
3. Interviews with the licensee's management and staff,
4. Interviews with the licensee's clients and children in care,
5. Interviews of witnesses to the matters at issue,
6. Inspections of records and documents related to the issues raised in the complaint,
7. Announced and unannounced inspections of the Agency or a facility,

8. Evaluation of a law enforcement or DCS report or investigation and supporting information for evidence of a licensing violation, and

9. Any other activity necessary to validate or refute the allegations in the complaint.

D. The licensee shall cooperate in any Department investigation.

E. Upon completion of an investigation involving a licensing complaint under this Section, the Department shall:

1. Find that the licensing complaint is invalid, document the findings in the Agency's licensing file, and close the investigation;

2. Find that the licensing complaint is valid and take action against the licensee if necessary under R21-7-114 or require corrective action under R21-7-113; or

3. Find that the licensing complaint cannot be validated or refuted based on the available evidence and document the finding in the licensing file.

F. The Department shall provide the licensee with written notification of any findings made under subsection (E) and shall place a copy of the written findings in the licensee's file.

G. For purposes of this Section, a licensing complaint is an allegation that the Child Welfare Agency has violated any of the requirements set forth in this Chapter or in A.A.C. Title 21 Chapter 8.

R21-7-135. Additional Provisions for a Child Placing Agency

A. Each Child Placing Agency shall compile an operations manual that is available to all Agency staff. All staff shall be familiar with the operations manual, which shall contain:

1. The mission statement with the overall philosophy that guides the Agency's services;

2. A statement of the primary purpose, services, and goals of the Agency;

3. A chart of organizational structure;

4. The Agency's intake policies and procedures;

5. The manual of the Agency's governing board;

6. The operational procedures that guide the delivery of the Agency's services; and

7. Copies of the Agency's forms.

B. The Child Placing Agency shall have office staff who is responsible for performing clerical services to maintain correspondence, records, and bookkeeping. A Child Placing Agency's files shall be regularly updated and maintained in good order.

C. The Child Placing Agency shall have access to a medical professional who makes recommendations regarding the medical aspects of the agency program, coordinates medical care for children in care, and advises staff regarding the health problems of specific children.

D. The Child Placing Agency shall have access to psychiatric, psychological, and legal consultation or services.

E. When placing a child in care:

1. The Child Placing Agency shall follow the placement requirements and procedures in A.R.S. §§ 8-514, 8-516, 8-528, and 8-813; and
2. The Child Placing Agency shall, at the time of placement, provide the foster parent or other placement with the documents and information for each child in care required under A.R.S. § 8-514.

F. The Child Placing Agency's offices shall:

1. Have sufficient space for interviewing children and families and for supervisory conferences and to ensure the privacy of the parties; and
2. Comply with any building, health, fire, and codes and ordinances in effect in the jurisdiction where the facility is located.

G. A Child Placing Agency shall maintain phone service at each office and facility.

H. Unless also licensed as a residential group care facility under Article 2 of this Chapter, a Child Placing Agency shall not utilize the facility's physical office for the purpose of housing children.

R21-7-136. Fees

A. Fees apply to a Child Welfare Agency applying for a license under this Chapter, but do not maintain a contract with the State, and meets the criteria set forth in A.R.S. § 8-467(F).

B. The applicant shall submit payment of fees at the time of application. Fees are based on the number of beds requested for the placement of children stated on the application.

C. Final fees shall be determined as follows:

1. If the Department issues a license for a lower bed capacity than initially requested by the applicant, the Department shall return payment of fees made in excess of the licensed bed capacity within 60 days of the license being issued.
2. If, at the applicant's request, the Department issues a license for a higher bed capacity than initially requested on the application, the applicant shall submit additional fees based on the number of beds licensed.
3. If the applicant has not paid fees at the time the license is issued, the Department shall issue a 60-day provisional license subject to the terms of R21-7-111.
4. Fees are not refundable if the applicant withdraws their application or a license is denied under R21-7-114.

D. The fee schedule is as follows:

1. For the initial application, the fee is set at $600 per bed available for the placement of a child.
2. For the renewal application, the fee is set at $600 per bed available for the placement of a child.
3. For an amendment application to modify a license or operating certificate that increases available beds for the placement of a child, the fee is set at $600 per new or additional bed available for the placement of a child. An amendment application to modify the license or operating certificate includes an application to:
   a. License a new facility; and
   b. Increase capacity for the placement of children.

ARTICLE 2. RESIDENTIAL GROUP CARE FACILITIES

R21-7-201. Orientation

A. A person who is interested in operating a residential group care facility may complete a Child Welfare Agency orientation.

B. The person shall contact the Department to request the orientation and the Department shall offer the orientation within 90 calendar days of the request.

C. During orientation, the Department shall review with the person the application requirements and licensing requirements as prescribed by this Chapter.

R21-7-202. Application for an Operating Certificate for an Additional Facility

A. A currently licensed Agency that wishes to obtain an operating certificate for an additional facility may file an application for an amended license to add a new facility.

B. The applicant shall submit an application as required by R21-7-124, with information specific to the new facility.

C. Upon receipt of all information listed in subsections (A) and (B), the Department shall consider whether the Agency has:

1. A license in good standing;
2. Any open Department or licensing investigation;
3. Any outstanding corrective action plan;
4. Any licensing complaints or concerns within the past 12 months; and
5. Demonstrated a need for the additional facility as described in this Chapter.

D. Upon the Department's determination that the information provided in subsection (C) is satisfactory to proceed, the Department shall schedule the facility for a site inspection within 14 calendar days, under R21-7-105.

E. The Department shall issue a licensing decision on the application as prescribed in R21-7-104 and R21-7-110 and within the time frames of R21-7-109.

F. An operating certificate expires at the end of the Agency's licensing year.

R21-7-203. Statement of Purpose; Program Description and Evaluation; Compliance with Adopted Policies; Child Rights

A. The licensee shall have a written statement that describes its philosophy, purpose, and program for a child in their care.

B. The licensee shall have a written program description of all services each facility provides to a child in care and their families and the methods of service delivery.

C. The licensee shall adhere to and enforce all plans, policies, and procedures that the licensee adopts in accordance with this Chapter.

D. The licensee shall provide a copy of the rights listed in A.R.S. § 8-529 to each child in care age 12 and older and for children less than 12 years of age as developmentally appropriate. This information shall be posted in a conspicuous location within each facility.

E. The licensee shall ensure that the person assisting the child in care with personal care be of the same gender, if needed.

R21-7-204. Combining Populations

A. The licensee shall not combine its child welfare program with other forms of care, programming, or business including foster care, child care, nursing or convalescent care for adults, or adult developmental care, unless the licensee:

1. Physically separates the children in the child welfare program from persons in other programs,
2. Prevents interaction between a child in the child welfare program and any person in another program, and
3. Demonstrates how the programs are separate and prevents interaction between residents and other programs.

B. This Section shall not be interpreted in a manner that prevents a child in care from interacting with other children in the course of typical day-to-day activities and experiences.

R21-7-205. Grievances

A. The licensee shall have a written policy and procedure governing the receipt, consideration, and resolution of grievances regarding the licensee's program and care of children brought to the licensee by a child in care, or child's parent or guardian. The policy and procedure shall:

1. Be written in a clear and simple manner that is developmentally appropriate for a child in care;
2. Prohibit retaliation against an individual who brings a grievance;
3. Describe a process for fair and expeditious resolution of a grievance;
4. Provide a means to tell the grievant about the action taken in response to the grievance;
5. Provide the grievant with instructions for submitting the grievance to the licensee; and
6. Identify an accessible location for blank copies of the grievance form in each facility.

B. The licensee shall maintain a log of grievances filed against the licensee. The licensee may keep a centralized Agency log, or may maintain a separate log for each facility. The log shall include the following information:

1. Name of grievant;
2. Date grievance filed;
3. Description of the substance of the grievance;
4. Summary of the grievance resolution; and
5. A copy of the grievance decision.

C. The licensee shall maintain written records of a grievance decision for at least three years after the resolution of the grievance, or three years after the child has left the Agency, whichever is later.

R21-7-206. Physical and Mental Health

A. The licensee shall require all direct care staff and any adult living in the facility to be free of medical, physical, or mental health conditions that would interfere with the safe care and supervision of a child in care.

1. The direct care staff and any adult living in the facility shall demonstrate compliance by submitting the following on forms provided by the Department:
   a. A health self-disclosure completed no more than 90 calendar days before beginning assigned duties or residing at the facility, and
   b. A physician's statement completed no more than 90 calendar days before beginning assigned duties or residing at the facility.
2. The direct care staff and any adult living in the facility shall submit a new physician statement and health self-disclosure at least every 12 months from the date of hire while working or residing in the facility.

B. The licensee shall require a parent or guardian, whose child lives on the premises, to do all of the following:

1. Submit a health self-disclosure of the child’s physical and mental health on a form provided by the Department:
   a. No more than 90 calendar days prior to the child residing in the facility,
   b. When a change to the physical and mental health of the child occurs since the last statement of physical and mental health, and
   c. At least every 12 months while the child resides in the facility.
2. Ensure the child is up to date on immunizations and provide supporting documentation.

C. When the health self-disclosure or physician statement from a direct care staff, or a child residing with the direct care staff, or any adult residing in the facility discloses a condition that may interfere with the care of or poses a risk to a child in care, the licensee shall provide the Department with a detailed plan that the licensee will implement so the condition does not interfere with the care of the child or mitigates risk.

R21-7-207. Notification of Unusual Incidents and Other Occurrences

A. The licensee shall have a written policy and procedure consistent with the requirements of this Chapter, regarding documentation of, and reporting requirements for unusual incidents.

B. The licensee shall maintain a record of each unusual incident in a separate log that permits the Department to easily locate the documentation of each incident that occurred.

C. The licensee shall immediately notify the Centralized Intake Hotline:

1. Of any incident of alleged physical or sexual abuse of a child in care;
2. Upon the death of a child in care;
3. When a child in care suffers an injury, illness, or psychiatric episode that is severe enough to require emergency medical intervention, treatment, hospitalization or emergency services for the child;
4. When a child in care attempts suicide;
5. Substance abuse by the child in care that results in emergency medical treatment, hospitalization, or overdose;
6. When a child in care is arrested by law enforcement;
7. When a child's whereabouts are unknown including a child who has run away from a facility;
8. When the facility requires an emergency evacuation; or
9. When the licensee is affected by a fire or natural disaster with or without the need of emergency evacuation.

D. The licensee shall immediately call emergency services and within two hours of the licensee's knowledge of the death of a child in care:

1. Notify the Placing Entity or, if no Placing Entity, parent or guardian who placed the child with the Agency;
2. Cooperate in any arrangements for examination, autopsy, and burial; and
3. Provide written notice to the Department.

E. If a child in care suffers a serious illness, serious injury, or a severe psychiatric episode requiring hospitalization, the licensee shall notify the Placing Entity or, if no Placing Entity, parent or guardian

who placed the child with the Agency and the Department within 24 hours of the licensee's knowledge of the occurrence.

F. If a child suffers a severe psychotic episode, or exhibits suicidal ideation, homicidal ideation, a threat of self-harm, or other mental health crisis that places the child or others in immediate danger, the licensee shall immediately contact a crisis hotline or the licensee's internal licensed counselor with training in crisis management. The licensee shall notify the Placing Entity or, if there is no Placing Entity, parent or guardian who placed the child with the Agency within 24 hours of the licensee's knowledge of the occurrence.

G. The licensee shall comply with the statutory obligation to report child abuse or neglect, under A.R.S. § 13-3620.

H. The licensee shall comply with any reporting requirements set forth in the licensee's contracts and shall give the Department written documentation on the form provided by the Department within 48 hours:

1. Of any fire or a natural disaster affecting the licensee, Agency, or facility with or without the need for emergency evacuation;
2. When pest infestation has been discovered at a facility;
3. When law enforcement involvement occurs in which a formal complaint is filed by or against the licensee;
4. When sexual contact or physical aggression occurs between children;
5. When a threat or altercation occurs involving a child in care;
6. When self-harming behavior occurs;
7. When a child in care receives emergency medical treatment;
8. When adverse medication reactions occur which may or may not result in medical intervention;
9. When medication is administered in an emergency situation;
10. When an accident or incident occurs involving injury or trauma to a child in care, including transportation related accidents;
11. When damage or theft of property occurs to or by a child in care;
12. When a child in care is involved in an incident that results in law enforcement contact;
13. When restrictive behavior management is used on a child in care;
14. Knowledge of substance use or abuse; and
15. When a call is made to the Centralized Intake Hotline involving a child in care.

R21-7-208. Investigations of Child Abuse or Neglect

A. The licensee shall ensure that the following requirements are met and have a written policy and procedure consistent with the requirements of this Chapter for handling alleged and suspected incidents of child abuse or neglect, to include the following provisions:

1. Immediately report a suspected incident of child abuse or neglect to law enforcement and the Department as required by A.R.S. § 13-3620;
2. Notify the Department, and notify the child's Placing Entity or person who placed the child with the Agency;
3. Take precautions to prevent further risk to the child who allegedly suffered the abuse or neglect and potential risk to any other child in care;
4. Contact law enforcement and the Centralized Intake Hotline if a child discloses that they are a victim of a crime, including sex trafficking;
5. Require staff to disclose to the licensee any substantiated finding of abuse or neglect recorded on the Central Registry during the staff's employment;
6. Evaluate staff who have a non-disqualifying act on the Central Registry for suitability to perform their assigned duties; and
7. Advise the Department of any staff who commits or allows child abuse or neglect, in order for the Department to ensure compliance with R21-7-104.

B. The licensee shall require all staff to read and sign a statement describing the duty to report child abuse or neglect under A.R.S. § 13-3620. The licensee shall maintain a copy of this statement in the staff's personnel file.

C. The licensee shall not internally investigate an incident of child abuse or neglect unless the Department approves.

R21-7-209. Runaway and Missing Children

A. The Agency shall have written policy and procedures, consistent with the requirements of this Chapter, for responding to a child in care who has run away or is otherwise a missing child.

B. The Agency's policy and procedure shall meet the following minimum requirements:

1. The Agency's strategies for making children feel safe and welcomed;
2. Notification shall be provided to the:
   a. Local law enforcement agency,
   b. Placing Entity or person who placed the child with the Agency, and
   c. Administrator of the child's facility or that person's designee;
3. Timeframes for notification to the entities detailed in R21-7-207;

4. How to submit an incident report to the Placing Entity or person who placed the child with the Agency; and
5. Ensure the safety of a runaway or missing child who returns to the licensee, including:
   a. Interviewing the child to determine the factors that led to the child's absence from the facility;
   b. Determining the child's experiences while absent from care, including whether the child is a victim of a crime or sex trafficking; and
   c. Determining substance use by the child in care that could result in emergency medical treatment, hospitalization, or overdose.

C. The Agency shall provide direct care staff information on reasons why children run away.

R21-7-210. Staff Coverage; Staff-child Ratios

A. The licensee shall have a written plan consistent with the requirements of this Chapter to minimize the risk of harm, ensure normalcy, and provide for the well-being of a child in care. The written plan shall describe the staffing for each facility, for 24 hours per day, seven days per week and shall explain:
1. How direct care staff coverage is assured:
   a. When assigned direct care staff are absent due to illness, vacation, or other leave of absence; and
   b. During emergencies, unplanned staff shortages, and when circumstances require additional staff;
2. The methods the licensee uses to assure adequate communication and support among direct care staff to provide continuity of services to a child in care; and
3. Direct care staff requirements for monitoring and documenting safety checks while a child in care is sleeping.

B. The licensee shall also have a written staffing schedule for each facility shift; the schedule shall document the direct care staff actually on duty during each shift. If there is a last minute or planned change to staffing, the licensee shall indicate on the staffing schedule. The licensee shall retain the schedule in one designated location at each facility for at least two years.

C. The licensee shall maintain paid direct care staff in the facility subject to the table below. The licensee shall assess the individual needs of the children in care and determine if additional paid direct care staff is necessary.

Age	**Minimum required direct care staff in the facility per number of children (staff-to-child ratio)**

Under the age of three years old	One paid direct care staff shall not care for more than five children under the age of three years old. At least one paid staff for each six children when children are sleeping.
Ages three years through five years old	One paid direct care staff shall not care for more than six children ages three through five years old. At least one paid staff member in each building where children are in care are sleeping.
Ages six years through 11 years old	One paid direct care staff shall not care for more than eight children ages six years through 11 years old. At least one paid staff in each building where children in care are sleeping.
Ages 12 years through 17 years old	One paid direct care staff shall not care for more than 10 children ages 12 years through 17 years old. At least one paid staff in each building where children in care are sleeping.
Young Adults	One paid direct care staff shall not care for more than 10 children ages 18 years old and more. At least one paid staff onsite for each 20 young adults.

D. For a multilevel facility the licensee shall have a minimum of one direct care staff for each living unit during sleeping hours, excluding single family homes.

E. The licensee shall have direct care staff in each building at each facility on shift who are trained and authorized to apply:

1. How to promote normalcy consistent with the program and policy of the Agency, and
2. Appropriate techniques of behavior management consistent with the program and policy of the Agency.

F. For the purpose of the direct care staff to child ratios in subsection (C):

1. Students and volunteers do not count as staff,
2. Staff providing one-on-one supervision for a designated child do not count as part of the overall direct staff-child ratio, and
3. Any child who lives at the facility is counted towards the ratio requirements.

G. The licensee shall not fall below the minimum direct care staff-child ratios specified in this Section and in addition shall maintain:

1. Direct care staff sufficient to care for a child as prescribed in this Article and in the licensee's own program description, statement of purpose, and policies; and
2. Practices or policies that take the following factors into account:
   a. The ages, capabilities, developmental levels, and service plans of a child in care;
   b. The time of day, and the size and type of the facility;

c. The facility's history and the frequency and severity of unusual incidents, including runaways, sexual acting-out behavior, disciplinary problems, and injuries; and

d. Any other information relevant to the need of a child in care at the facility.

H. The licensee shall have a sufficient number of qualified staff to perform the direct service, clerical, fiscal, food service, housekeeping, and maintenance functions prescribed in this Article and in the licensee's own policies.

R21-7-211. Admission and Intake; Criteria; Process; Restrictions

A. The licensee shall have a written policy and procedure describing the process and requirements for both regular and emergency admissions and intake. The policy shall include the provisions listed in this subsection.

1. The licensee shall have a method to allow a child to participate in admission and intake decisions, including selection of living unit, if developmentally appropriate and consistent with the licensee's program;
2. The licensee shall provide the Placing Entity or, if there is no Placing Entity, parent or guardian who placed the child with the Agency with a reasonable opportunity to participate in admission and intake decisions;
3. For an emergency admission the licensee shall have documentation that attempts were made to obtain the following:
   a. A written agreement with the child's Placing Entity,
   b. A court order, or
   c. The written consent of the child's custodial parent or guardian;
4. The licensee shall obtain any available medical information about the child before or at the time of the child's admission. The information shall include the following, if available to the licensee:
   a. A report of a medical examination of the child performed within 45 calendar days prior to admission;
   b. A report of a dental examination of the child performed within six months prior to admission; and
   c. The child's and child's family's medical history;
5. The licensee shall comply with the requirements of R21-7-224 to obtain an examination;
6. At the time of or prior to admission, the licensee shall obtain written consent from the Placing Entity, or if there is no Placing Entity the child's parent or guardian, for the licensee to authorize routine medical and dental procedures for the child;
7. If a child is taking medication at the time of admission, the licensee shall:

a. Document in the child's medical record required by R21-7-121 and the medication administration schedule required by R21-7-226; and

b. Administer medication, prescribed or over-the-counter, only if it is in the original container, and if applicable, labeled by the dispensing pharmacy with a fill date, prescribing physician, and instructions for administration; or

c. Schedule a medical appointment immediately if the medication is not its original container, and if applicable, labeled by the dispensing pharmacy with a fill date, prescribing physician, and instructions for administration; and

8. Within 24 hours of a child's admission, a licensed medical professional or staff who has the training listed in R21-7-132, shall complete a child's initial wellness screening, to include:

a. A visual inspection of the child for signs of obvious physical injury and symptoms of disease or illness;

b. An assessment of the child for evidence of apparent vision and hearing problems; and

c. The documentation of any condition or problem and referring the child for immediate or further assessment or treatment, if indicated.

B. Intake Assessment:

1. Prior to admitting a child into a facility, a licensee shall:

a. Ensure the child has a current intake assessment covering the child's social, health, educational, legal, family, behavioral, psychological, and developmental history; or

b. Completes such an assessment within seven workdays following the child's admission;

2. In this subsection, "current" means within the six months prior to admission.

C. The licensee shall not admit a person who is age 18 or older, except a licensee may provide care for a young adult less than 21 years of age who was a child in care and turned 18 while in care as long as the young adult is currently enrolled in and regularly attending a high school program, vocational training program or post-secondary education or meets criteria in A.R.S. § 8-521.02 and continues to reside in a Child Welfare Agency under an individual case plan agreement for out of home care.

1. A child who turns 18 and continues to reside in care is not required to obtain a Level One fingerprint clearance card.

2. A young adult who exits and re-enters care under A.R.S. § 8-521.02 is not required to obtain a Level One fingerprint clearance card.

3. A licensee who provides care for a young adult who is continuing in care shall adhere to all requirements of this Chapter.

D. The licensee shall obtain written approval from the Department prior to admitting a child who does not fall within the licensee's admission criteria.

R21-7-212. Information and Services Provided to the Placing Entity, Parent, or Guardian

A. The licensee shall provide information, no later than the date of a child's admission, about the following subjects to the Placing Entity, or if there is no Placing Entity, a parent or guardian:

1. The licensee's program description required by R21-7-107,
2. Daily routines and schedule at the facility where the child is or will be placed,
3. The method of how to assign the child to a particular living unit,
4. The positive behavior management policies and procedures prescribed in R21-7-227,
5. Services and treatment strategies provided or used at the facility,
6. The visitation and communications policy prescribed by R21-7-220,
7. The education program or method for providing a child with education, and
8. Any religious practices observed by the licensee or religious observances required of a child in care.

B. The licensee may provide the information in summary form or orally, but shall:

1. Convey the information in a language or form that the Placing Entity, or if there is no Placing Entity, parent and guardian can understand;
2. Advise the Placing Entity, or if there is no Placing Entity, parent or guardian that, upon request, the licensee shall provide a copy of the licensee's policies or procedures; and
3. Provide contact information for which the Placing Entity, or if there is no Placing Entity, parent or guardian can obtain information about the program, facility, or child in care.

C. The licensee shall provide the Placing Entity, or if there is no Placing Entity, parent or guardian with a copy of the licensee's grievance procedures required by R21-7-205 and the rights of a child in care required by R21-7-203.

D. The licensee shall explain the contents of the documents before obtaining the signature of a child's parent or guardian on a contract, consent, or release.

E. The licensee shall obtain the dated signature of the Placing Entity, or if there is no Placing Entity, parent or guardian indicating receipt of the information listed in subsections (A) through (C).

R21-7-213. Orientation Process for a Child in Care

A. The licensee shall have a written policy and procedure for providing an orientation to a child placed in the licensee's care.

B. The licensee shall provide a child admitted into care with the orientation described in this Section. The orientation shall be in a language and manner that the child can understand and that is developmentally appropriate to the child.

C. During the first full day of a child's placement, the licensee shall:

1. Take the child on a tour of the facility; and
2. Introduce the child to staff and other residents.

D. During the first 72 hours following a child's admission and as part of each child's orientation, the licensee shall:

1. Familiarize the child with the licensee's program;
2. Explain the licensee's expectations and requirements for behavior;
3. Explain the criteria for successful participation in and completion of or discharge from the program, if applicable;
4. Make available a copy of the Agency's behavior management policy and procedure required by R21-7-227;
5. Make available a copy of the visitation and communication policy prescribed by R21-7-220; and
6. Describe and, upon request, make available a copy of the grievance procedures required by R21-7-205 and the statement of child rights prescribed by R21-7-203.

E. The licensee shall document the orientation and other information given to a child in the child's record.

R21-7-214. Child's Service Plan

A. If a child in care has an existing service plan at the time of admission, the licensee shall:

1. Review the plan before or at the time of the child's admission, and
2. Assess the existing plan and make any necessary additions to conform to the requirements of this Section.

B. If a child in care does not have a service plan at the time of admission, the licensee shall initiate service planning at the time of admission.

C. Within seven workdays of a child's admission, a licensee shall document all interim planning efforts identifying the child's needs and initial plans for service.

D. No later than 30 calendar days after the child's admission to a facility, the licensee shall:

1. Complete the child's initial service plan or any modifications to an existing plan; and
2. Identify Agency staff responsible for education, behavioral health, and any additional assistance the child in care requires to support the service plan.

R21-7-215. Discharge; Discharge Summary

A. The licensee shall have a written policy and procedure that conform to the requirements of this Chapter, for a planned and unplanned discharge of a child in care.

1. Before a child's planned discharge, the licensee shall explain the discharge plan to the child and help the child understand the plan.
2. The licensee shall explain the discharge plan to the Placing Entity, parent or guardian removing the child at the time of discharge.
3. The discharge plan shall include the following information:
    a. The name, address, telephone number, and relationship of the person to whom the child was discharged;
    b. A list of medication provided during care, with a summary of the reasons for prescribing the medication and any outcomes of the medication;
    c. A summary of progress toward service plan goals;
    d. An assessment of the child's unmet needs and alternative services that might meet those needs;
    e. Identification of the person or Placing Entity responsible for ensuring provision of recommended follow-up services and after-care; and
    f. For an unplanned discharge, a description of the circumstances surrounding the unplanned discharge, including the licensee's actions.

B. When a child's Placing Entity, or if there is no Placing Entity, parent or guardian has not participated in the decision to discharge the child, the licensee shall notify the Placing Entity, or if there is no Placing Entity, parent or guardian within one hour of discharge, or document attempts at notification. The licensee shall provide the required information detailed in the licensee's policy to the child's Placing Entity, or if there is no Placing Entity, parent or guardian within 15 calendar days from the child's discharge date.

R21-7-216. Personal Care of a Child in Care

A. The licensee shall provide a child in care with:
1. Developmentally appropriate supervision, assistance, and instruction in, good habits of personal care and hygiene and culturally appropriate grooming;
2. Necessary toiletry items; and
3. The opportunity to have a daily shower or bathe in private, as developmentally appropriate, or as otherwise prescribed in program policy.

B. The licensee shall not allow community use of grooming and hygiene items such as towels, toothbrushes, soap, hairbrushes, and deodorants.

C. If the licensee restricts personal care or grooming practices, the licensee shall have a policy describing the restrictions and the reasons for the restrictions.

D. The licensee shall not restrict access to feminine hygiene products of the child's choice.

R21-7-217. Children's Clothing and Personal Belongings

A. The licensee shall allow a child in care to bring clothing and personal belongings to the facility and acquire belongings while in care, in accordance with the child's service plan and the facility's policy.

B. When a child is admitted, the licensee shall inventory the child's clothing, shoes, and personal belongings. The licensee shall provide a copy of the inventory to the Placing Entity, or if there is no Placing Entity, parent or guardian, and keep a copy in the child's file.

C. The licensee shall either store any restricted possessions or return the possessions to the child's Placing Entity, or if there is no Placing Entity, parent or guardian.

D. The licensee shall allow a child to select their own clothing and shoes when developmentally appropriate.

E. If the licensee limits a child's right to have, wear, or display certain clothes, shoes, or personal belongings, the licensee shall:

1. Have a written policy explaining the limitations and the reasons for the limitations, and
2. Explain the limitations to the child in a form and manner that the child can understand.

F. The licensee shall ensure that each child has a personal supply of clean and seasonally appropriate clothing and shoes as required for health, comfort, and physical well-being and as appropriate to the child's age, gender, size, and individual needs.

G. The licensee shall have a policy governing a child's clothing and personal belongings that covers the following:

1. The method of storage and access to a child's clothing and personal belongings while a child is in the care of the licensee;
2. The retention, return, and disposal of clothes and personal belongings of a child who is discharged;
3. The requirement of the licensee to obtain written approval from the Placing Entity, or if there is no Placing Entity, parent or guardian prior to disposal of any of a child's clothing and personal belongings. The requirement shall include at least three attempts within 30 calendar days, to seek approval prior to disposing of any child's clothing and personal belongings; and
4. At the time of a child's planned discharge, the licensee shall allow the child to take their clothing and personal belongings.

R21-7-218. Children's Money

The licensee shall provide opportunities for a child in care to develop a sense of the value of money. This may include allowances, earnings, spending, giving, or saving. Any practices regarding the child's money shall comply with this Section.

1. The licensee shall have a written policy governing allowances, accounting records for the money of each child, disbursements of the money of each child, and purchases made by the child applicable to the licensee's program.
2. The licensee shall treat a child's money as that child's personal property.
3. The licensee may limit the amount of money to which a child may have access when the limitations are:
   a. In the child's best interest and explained in the child's service plan; and
   b. In accordance with the facility's program description.

R21-7-219. Nutrition; Menus; and Food Service

A. The licensee shall have a written, dated menu of planned meals. The licensee shall:
1. Have the menu either prepared or approved by a registered nutritionist or dietician;
2. Have the menu available at the facility at least one week before meals are served;
3. Post the weekly menu in a location where a child in care may review it; and
4. Keep a copy of the menu and any menu substitutions on file for one year and keep the record in a central location at the Agency or facility.

B. The licensee shall prepare and serve meals in compliance with the written, dated menus.

C. The licensee shall ensure cooking staff have knowledge in how to plan and cook a nutritional meal.

D. The licensee shall develop and follow a specialized menu for a child in care with special nutritional needs. The licensee shall make special menus available to staff, but shall not post special menus in an area that is readily seen by other children in care.

E. Menus shall reflect the religious, ethnic, and cultural differences of children in care.

F. Menus shall reflect nutritional standards including servings of dairy, vegetables, fruits, carbohydrates and protein reflecting the latest standards from the United States Department of Agriculture.

G. When developmentally appropriate, a licensee shall allow children to make menu suggestions.

H. The licensee shall provide each child with at least three meals daily and supply snacks in between meal times; between-meal snacks shall not replace regular meals.

I. The licensee shall provide meal portions that are consistent with each child's caloric and metabolic needs.

J. The licensee shall serve a child meals that are the same as those served to staff unless special dietary needs require differences in diet.

K. All meals and between-meal snacks shall consist of foods that are within noted expiration or sell-by dates, and fresh fruits and vegetables that are not bruised, overripe, rotten, or inedible.

L. The licensee shall allow child in care to eat at a reasonable rate. Unless otherwise prescribed in Agency policy, staff shall encourage social interaction and conversation during meals.

M. The licensee shall have potable water available at all times.

N. Direct care staff shall directly supervise a child in care who is involved in food preparation.

R21-7-220. Visitation; Mail; Internet Usage; Phones

The licensee shall have a written policy and procedure that conforms to the requirements of this Section and this Chapter, regarding visitation, mail, phone calls, internet use, and other forms of communication between a child in care and the child's family, friends, and other persons.

1. The licensee shall keep a record of all persons who visit a child in care.
2. The licensee shall allow a child reasonable privacy during a visit unless the child's service plan requires supervised visitation.
3. The licensee shall have facility visiting hours that meet the need of a child and the child's parents, caregivers, family members, and approved friends and acquaintances.
4. The licensee shall not deny, monitor, record, or restrict a child's communication with the Department or child's social worker, attorney, Court Appointed Special Advocate, guardian ad litem, or clergy.
5. The licensee shall not deny, monitor, or restrict communications between a child and the child's parent, guardian, or friends except as follows:
   a. By court order;
   b. When the child's service plan contains specific and time limited treatment reasons for the restriction;
   c. At the direction of the child's Child Safety Worker, or if not in the custody of the Department, the Placing Entity; or
   d. As agreed upon by the parent or guardian with the licensee if the child in care is not in the custody of the Department and there is no Placing Entity.
6. The licensee shall allow a child access to electronic communication including texting, phone, video chatting, and email except as follows:
   a. By court order;
   b. When the child's service plan contains specific and time limited treatment reasons for the restriction;

c. If not in conflict with either of the above, at the direction of the child's Child Safety Worker or the Placing Entity; or

d. As agreed upon by the parent or guardian with the licensee if the child in care is not in the custody of the Department and there is no Placing Entity.

7. The licensee shall ensure a child in care has internet access to complete school work, obtain employment, or for the use of current employment. Any other internet activity may require approval from the Placing Entity, or if there is no Placing Entity, parent or guardian.

8. The licensee may require a child in care to open mail in the presence of staff in order to inspect the mail for contraband with documented approval from the Placing Entity, or if there is no Placing Entity, parent or guardian.

9. When the licensee is monitoring a communication as permitted in subsection (5), the licensee shall inform the parties to the communication about the monitoring.

R21-7-221. Educational and Vocational Programs

A. The licensee shall have a written policy governing its educational program or a plan for ensuring that each child in care attends an educational program in accordance with state and local laws. The licensee shall have at least one designated person to oversee compliance with the policy.

B. Upon a child in care's admission to a facility, the licensee shall arrange for the educational needs of the child. The arrangements shall:

1. Meet the child's individual needs;

2. Be consistent with the child's IEP, if applicable; and

3. Comply with federal and state education laws.

C. The licensee shall inform the child in care's educational program staff which of the licensee's staff is authorized to discuss the child's progress.

D. If a child in care's service plan provides for the child to receive vocational services, the licensee shall comply with the plan requirements.

E. The licensee shall provide a child in care with:

1. Opportunity and space for quiet study,

2. Developmentally appropriate supervision and assistance with homework, and

3. Access to necessary reference materials including access to resources found on the internet.

F. The licensee shall communicate developmental and educational progress and challenges, including any noted developmental delays, to the Child Safety Worker, Placing Entity, or if there is no Placing Entity, the parent or guardian.

G. The licensee shall work with the Child Safety Worker, Placing Entity, or if there is no Placing Entity, the parent or guardian, and surrogate parent if identified, to determine educational needs beyond those provided in the school setting and make reasonable efforts to obtain these educational services that are available.

H. The licensee shall:

1. Enroll the child in care in school within 10 local school days if a change in school is needed. If not placed during the school year, then as soon as possible;
2. Ensure school attendance for a child in care;
3. Ensure the child in care completes homework;
4. Schedule appointments, visitations, and other activities during hours that do not interfere with school;
5. Participate in parent-teacher conferences, IEP, and 504 plan meetings, as appropriate;
6. Allow a child in care to participate in extracurricular activities; and
7. Obtain required supplies to complete assignments and participate in extracurricular activities.

I. The licensee may use developmentally appropriate chores to provide an instructional experience for a child in care, but shall not:

1. Use the child as an unpaid substitute for staff or other contracted personnel;
2. Schedule at a time that interferes with other routine activities such as school, homework, sleep, and meals; and
3. Assign chores that are excessive in scope and duration.

R21-7-222. Recreation; Leisure; Cultural Activities; Community Interaction

A. The licensee shall have as part of the Agency's written program description the Agency's cultural, religious, indoor and outdoor recreational and leisure opportunities available to a child in care that may include:

1. Interests and needs of the child in care, including an allotment of time for the child to pursue individual interests, and time to address the special needs of the child; and
2. Procedures promoting normalcy through a child's participation in current community and community of origin activities and use of community resources.

B. The licensee shall arrange transportation and supervision to support a child in care's community activities, extracurricular activities, and use of community resources that are applicable to the Agency's program description.

C. The licensee shall make available recreational equipment, activities, and games suitable to the size, age, population, and developmental level of a child in care.

R21-7-223. Religion; Culture; Ethnic Heritage

A. The licensee shall include in their program description:

1. Its religious orientation, if any;
2. Any religious practices observed at a facility; and
3. How the licensee provides opportunities for each child in care to participate in religious activities in accordance with the faith of the child or the faith of the child's parent or guardian.

B. The licensee's program and the service plans for a child in care shall reflect consideration of and sensitivity to the racial, cultural, ethnic, and religious background of a child in care.

C. The licensee shall not compel a child in care to participate in religious, cultural, and ethnic activities if it is contrary to the child's religious, cultural, and ethnic practices or the wishes of the parent, guardian, or legal custodian.

R21-7-224. Health Care Services

A. General health care for a child in care:

1. The licensee shall have policy and procedures identifying how the Agency will comply with the health services for children as required in this Section. The policy shall identify where a child may obtain qualified health care, 24-hours per day, seven days per week.
2. The licensee shall meet the preventive, routine, and emergency medical, dental, vision, and behavioral health needs of a child to include the following as necessary:
   a. Evaluation and diagnosis,
   b. Treatment, and
   c. Consultation.
3. The licensee shall ensure that a child receives a developmentally appropriate explanation of any health treatment the child receives, in a language and manner the child can understand.
4. The licensee shall seek medical attention for the child if the child reports or appears to be suffering from pain or illness.
5. The licensee shall carry out the written and verbal instructions from qualified professionals regarding the medical, vision, dental, and behavioral health needs of the child.
6. The licensee shall notify the Placing Entity, or if there is no Placing Entity, parent or guardian when written and verbal instructions from multiple medical professionals conflict.
7. The licensee shall ensure that a child, 12 months of age and younger, is placed to sleep on the child's back unless otherwise authorized in writing by the child's physician.

B. The licensee shall protect and care for the health and well-being of a child in care and:

1. Provide necessary first aid and care to treat common childhood ailments and injuries;
2. Maintain first aid supplies in each facility to meet the needs and number of children residing at the facility;
3. Arrange for a child in care to receive a well-child exam from a medical professional within 30 calendar days of the child's admission, unless the licensee has documentation from the following that the well-child exam was completed within 30-days preceding the child's admission:
   a. The child's insurance;
   b. The Department that the child has already had the required well-child visit; or
   c. A medical professional who has completed the well-child exam;
4. Obtain well-child visits for each child under the age of two as described in the schedule below unless otherwise recommended by a medical professional. A well-child visit includes both a medical and vision examination as appropriate to the child's age and in accordance to Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) requirements prescribed in 42 CFR 441.58;
5. Obtain an annual well-child visit for each child older than two years of age;
6. Obtain immunizations based on the current recommended immunization schedule published by the Centers for Disease Control and Prevention unless:
   a. Prohibited by court order,
   b. A parent or guardian enters a legally recognized objection, or
   c. The immunization is medically contraindicated;
7. Administer prescription medication only as prescribed and ensure no lapse occurs in the administration of the prescription medication to the child;
8. Participate in health care appointments, including appointments where information is provided specific to a medical condition of the child; and
9. Obtain the following when a child wishes to participate in organized sports:
   a. An evaluation of the child's capacity to participate;
   b. An examination or sports physical; and
   c. A report or statement signed by the medical professional conducting the examination regarding the child's capacity, fitness, and clearance to participate in sports.

C. Dental care

1. The licensee shall arrange for each child in care, one year of age or more, to have a dental examination within 30 calendar days of admission, unless the licensee is provided the written results of a dental examination conducted within six months prior to admission.

2. The licensee shall obtain routine dental examinations for each child in care, one year of age or more, at least once every six months and more frequently as recommended by the dentist.

D. Behavioral Health Care

1. The licensee shall cooperate with behavioral health referrals, evaluations, and services as applicable.
2. The licensee shall ensure each child in care attends all behavioral health follow-up visits and complies with all behavioral health recommendations.

R21-7-225. Medications; Allergies

A. The licensee shall have a written policy and procedure that governs over-the-counter and prescription medication usage and shall specify:

1. Safe storage of medications as required by A.A.C. Title 21, Chapter 8, Article 1;
2. A process to identify and ensure a child in care has access to necessary medication while at school or outings; such as rescue inhalers, and auto injector pens;
3. The process for medication administration, which shall be in accordance with any applicable laws;
4. The qualifications of the staff allowed to administer medications;
5. The qualifications of the staff allowed to supervise the self-administration of medications;
6. The supervision, process, and documentation of self-administration of medication;
7. The documentation process for the administration of medication, medication errors, and drug reactions;
8. The process and documentation of notifying a child in care's health care provider in case of a medication error or a drug reaction; and
9. The process and documentation when a child in care refuses to take a prescribed medication.

B. The licensee shall have a written policy and procedure that governs food allergies, medication allergies, or other allergies and shall specify:

1. The plan in the event of the child in care's exposure to an allergen;
2. That a licensee disclose the child in care's known allergies to a prescribing medical professional prior to the prescription or administration of medication or any procedures; and
3. The precautions a licensee shall take to ensure the child in care is not exposed to a food or other allergen, including:
   a. Safe food handling to minimize the chance of cross contamination, and
   b. Review of household items to ensure that they do not include a substance to which a child is allergic.

C. The licensee shall have a written medication log for each child in care who receives medication. The log shall include:

1. Child's name;
2. Child's allergies;
3. Name of the prescribing medical professional;
4. Telephone number at which the prescribing medical professional may be reached in case of medical emergency;
5. Reason for each prescribed medication;
6. Date on which the medication was prescribed;
7. Generic or commercial name of the medication;
8. Dosage level and time of day when the medication is to be administered, including any special administration instructions;
9. Each date, time, and dosage administered;
10. Dosages remaining after each administration;
11. The signature of the direct care staff administering each dosage. If the medication is self-administered, the log shall include the signature of the child and the direct care staff supervising the child's self-administration; and
12. The signature of the direct care staff and child if a dose is refused by the child.

R21-7-226. Medication Administration; Handling; Storage

A. The licensee shall ensure that each child in care receives all prescribed medication at the prescribed time and in the prescribed dose.

B. The licensee shall comply with the following requirements and have a policy and procedure to:

1. Review the amount of medication available when then child enters care,
2. Determine when and if a medication needs to be refilled,
3. Allow sufficient time for the timely refill of the medication, and
4. Have the pharmacy and insurance information clearly indicated to allow for the timely refills of medications.

C. The licensee shall ensure the medication logs are accurate and updated on a daily basis.

D. The licensee shall store prescription medication in a securely locked space in its original container and ensure that the original label is intact and unaltered.

E. The licensee shall keep all over-the-counter medication in its original container with the manufacturer's label.

F. The licensee shall, at least once every 90 calendar days, securely dispose of:

1. Outdated medication;
2. Medication for a child who is no longer at the facility or, by a medical professional's order, no longer needs the medication; and
3. Medication specifically prescribed for an illness from which a child in care has recovered.

G. The licensee shall secure the confidentiality of the medical information that may be on the medications during the process of disposal.

H. The licensee shall keep a record of all disposed medications, method of disposal, and any attempts to deliver the medication to the child if the child leaves the care of the Agency.

I. The licensee shall arrange for all of a child's necessary medication and medical supplies to go with the child when the child is discharged from the facility.

R21-7-227. Nurture; Supervision; Positive Behavior Management

A. An Agency shall nurture a child in care by:

1. Providing the child with opportunities to develop emotionally, socially, culturally, physically, and educationally, as appropriate to the child's skill and developmental level;
2. Helping the child develop a positive identity by respecting the child's race, ethnicity, religion, gender, gender identity, gender expression, culture, and sexual orientation by making active efforts to create an inclusive environment including celebrating holidays, displaying artwork, and providing meals that reflect the child's identity, and seeking out opportunities for the child to increase their connectedness to communities that reflect their identities;
3. Providing the child with opportunities to express preferences and make choices appropriate to the child's age and developmental level;
4. Providing the child with a variety of safe and developmentally appropriate play equipment, toys, and recreational supplies;
5. Practicing positive discipline;
6. Assisting the child with day-to-day concerns;
7. Providing the child with assistance, comfort, and emotional support to ease the distress associated with coming into care and with related transitions;
8. Assisting in maintaining the child's connection to their family, friends, community, and culture; and
9. Providing opportunities for the child to contact family members, friends and other persons the child identifies as significant to the child's well-being by means of face-to-face contact, mail, telephone, or other modes of communication, unless otherwise directed by a court order, the Placing Entity or, if there is no Placing Entity, the parent or guardian.

B. An Agency shall commit to provide each child in care with the support and supervision in accordance with licensing requirements and based on the child's age, developmental level, and maturity.

C. The licensee shall:

1. Provide positive discipline that is appropriate to the age, life experience, and developmental level of a child in care;
2. Establish well-defined and clearly communicated rules that set the limits of behavior;
3. Develop and implement reasonable, developmentally appropriate, and consistent rewards and consequences;
4. Use disciplinary methods that help a child in care build self-control, self-reliance, and self-esteem; and
5. Inform the Placing Entity, or if there is no Placing Entity, parent or guardian, of any behavior displayed by the child in care that endangers the health, safety, or well-being of the child or others.

D. An Agency shall have a written behavior management policy and procedure for a child in care that shall:

1. Be based on positive discipline methods that are developmentally appropriate for a child;
2. Be designed to encourage and support the development of self-control;
3. Describe the following:
   a. Behavior expectations of a child;
   b. The consequence to a child for a violation of the Agency's policy and procedure. A consequence shall:
      i. Reasonably relate to the violation, and
      ii. Be administered without prolonged and unreasonable delay;
   c. The circumstances when a licensee permits the use of restrictive behavior management;
   d. The kind of behavior warranting use of restrictive behavior management;
   e. The licensee's methods of documenting use of restrictive behavior management;
   f. Any restrictive behavior management technique that requires supervisory authorization or written documentation before being used;
   g. The licensee's process for supervisory review to evaluate whether staff properly applied restrictive behavior management in a particular case; and
   h. Any behavior management technique prohibited by the licensee; and
4. Abide by the requirements in this Chapter related to positive discipline and prohibited practices.

E. The licensee and direct care staff are responsible for control and discipline of a child in care. The licensee shall not allow a child to discipline another child.

F. The licensee shall not allow any child in care to be subjected to maltreatment, abuse, neglect, cruel, unusual, or physical discipline.

G. The licensee shall not use or threaten to use, or engage in and shall not permit any other person to use or threaten to use, or engage in, the following or similar punishment or maltreatment of a child in care including:

1. Any form of physical punishment, including hitting, spanking, biting, pinching, shaking, slapping, smacking, punching, or kicking;
2. Verbal abuse, including ridicule, profane language targeting a child, or humiliation;
3. Deprivation of medical care, medicine, shelter, bedding, food, water, clothing, sufficient sleep, or opportunity for toileting;
4. Force-feeding, except as prescribed by a licensed medical practitioner;
5. Seclusion, confinement in a locked room or small area or restricting access to the facility;
6. A consequence that requires a child to remain silent or motionless or to be isolated for a time period that is not developmentally appropriate;
7. Require a child to take a painfully uncomfortable position, including squatting or bending;
8. Behavior management involving chemical restraint, including over-the-counter or prescription medication for the purpose of restraining or sedating a child;
9. Restrictive behavior management involving mechanical or physical restraint except:
    a. When the restraint is necessary to prevent danger to the child or danger to another;
    b. After staff has tried less restrictive measures that have failed; and
    c. When the licensee has documentation of the restrictive behavioral management training in the personnel file of the staff using the restraint;
10. Derogatory remarks about the child, the child's race, religion, ethnic origin, sexual orientation, gender identity, gender expression or about a person who is significant to the child;
11. Cruel, severe, depraved, humiliating, or frightening actions or statements;
12. Noxious stimuli as a consequence, including washing a child's mouth with soap, vinegar or hot sauce;
13. Denial of visitation or communication with a significant persons outside the facility solely as a consequence for inappropriate behavior; or
14. Required physical exercises such as running laps or performing push-ups, and assignment of physically strenuous activities, except:
    a. As expressly prescribed in a child's service plan and as part of a regular physical conditioning program, or as part of a work experience that meets the programs requirements;

b. With documented clearance by a physician who is knowledgeable about the physical activities in which the child will participate; and

c. Within sight supervision of staff.

H. The licensee shall not use disciplinary measures against a group of children because of the behavior of one or more children in the group.

I. Only staff specifically trained in crisis intervention may use restrictive behavior management on a child in care and:

1. No person shall use restrictive behavior management for the purposes of discipline or convenience;
2. A trained staff shall administer restrictive behavior management in the least restrictive manner possible to protect the child or others and cease when the child becomes calm;
3. After child becomes calm, staff shall speak with the child and develop a strategy to reduce the likelihood of the need for restrictive behavior management in the future; and
4. The licensee shall provide written notice to the Placing Entity, or if there is no Placing Entity, parent or guardian within 24 hours of the use of restrictive behavior management.

J. To determine the licensee's compliance with the use of appropriate behavior management, the Department shall consider all the circumstances at the time of the behavior management, including the following:

1. The child in care's physical condition;
2. Whether the child in care was taking any medications that may have affected the child's behavior;
3. Whether or not the climatic conditions made the behavior management severe or unreasonable, such as intense heat or cold, rain, or snow;
4. The level of physical force, if any, the licensee used to implement the behavior management and whether any use of force resulted in injury to the child in care; and
5. Whether the behavior management was consistent with the licensee's program description, procedures, and the requirements of this Section.

K. The licensee may use physical restraint only when the practice and the circumstances warranting its use are:

1. Consistent with the licensee's program description and purpose,
2. Described in the licensee's behavior management policy,
3. Used as prescribed in this Section, and
4. Not otherwise prohibited by these rules.

L. If the licensee cannot use a specific restrictive behavior management practices on a particular child, the child's service plan shall describe the restriction.

R21-7-228. Property and Personal Searches

A. If the licensee permits a property search of a child in care, the licensee shall have a written policy that conforms to the requirements in this Chapter and approved by the Department. The written policy shall describe the conditions warranting a property search and the procedures for conducting the search, including the use of electronic scanning devices or metal detectors.

B. The licensee shall not search a child in care unless the licensee has a reasonable belief that the child is concealing an object that places themselves or others at risk or harm, including a weapon, an illegal substance, or a cell phone which is being used inappropriately.

1. When searching a child, staff shall use the minimum amount of physical contact required to determine if the child has a weapon or illegal substance.
2. The licensee shall not use any instruments to search a child except approved metal detector or electronic scanning devices.
3. The licensee shall not conduct a strip search.
4. The licensee shall not conduct an internal body cavity search on a child.
5. Unless a licensed medical professional is searching a child, a person of the same gender as the child shall do the search.

R21-7-229. Buildings and Grounds

The licensee shall maintain a facility's structures and improvements in good repair, free from danger to health or safety as prescribed in this Section and by the Life Safety Inspection requirements of A.A.C. Title 21, Chapter 8, Article 1. The licensee shall:

1. Repair any damage within 48 hours of discovery;
2. If damages cannot be repaired within 48 hours, the licensee shall provide the Department documentation detailing the efforts to obtain repairs and estimate of when the repairs will be completed. The licensee shall provide the Department this documentation within 48 hours of discovery of damage;
3. Have barriers appropriate to the developmental needs of children in care to prevent falls from porches and elevated areas, walkways, and stairs;
4. Ensure that a facility's physical plant can structurally accommodate the physical and program needs of all children in care according to the standards in this Chapter and the licensee's own program description;
5. Have mirrors in the facility to permit a child in care to examine their personal appearance and shall secure mirrors to walls at heights appropriate to a child in care;

6. Ensure that a window or door used for outside ventilation has a screen;
7. Ensure that a window designated as a fire exit complies with the building codes as required by the local jurisdiction;
8. Install and maintain emergency lighting systems in all living quarters if the facility is licensed to provide services to 10 or more children. Emergency lighting system means a battery or generator operated system that:
   a. Automatically activates if electrical power fails; and
   b. Provides sufficient light for persons to exit safely in an emergency;
9. Have written documentation showing that a facility's emergency lighting system meets applicable city or county building codes for such systems, if applicable;
10. Illuminate a facility's outdoor walkways and premises so that a child and staff using areas at night can perform activities and tasks safely; and
11. Ensure that free-standing stoves that use wood, sawdust, coal, or pellets, or portable heaters are not used as the primary source of heat for a residential area.

R21-7-230. Kitchens; Food Preparation; Dining Areas

A. An Agency shall:

1. For a facility, that has a licensed capacity of more than 20 residents:
   a. Obtain a license or permit as a food establishment under A.A.C. Title 9, Chapter 8, Article 1; and
   b. Maintain a copy of the food establishment license or permit in the kitchen;
2. Maintain a copy of the food establishment's license or permit if the Agency contracts with a food establishment, under A.A.C. Title 9, Chapter 8, Article 1, to prepare and deliver food to the facility;
3. Equip a facility kitchen used for meal preparation with the fixtures, appliances, equipment, tools, and utensils necessary for the safe and sanitary preparation, storage, service, and cleanup of food;
4. Keep kitchen equipment clean and in good working order;
5. Maintain dishes and utensils free of damage or defect;
6. Not use home canned foods;
7. Dispose of all foods and products that have passed the marked or expiration dates;
8. Maintain primary pantries, refrigerators or freezers free of locks;
9. Ensure that food is obtained, prepared, served, and stored as required by time and temperature control for safety food standards;

10. Ensure food is free of and protected from spoilage, rot, filth, or other contamination and is safe for human consumption;
11. Ensure foods requiring refrigeration are maintained at 41° F or below;
12. Ensure that all cooked food products, cut fruit and vegetables are date marked with date of purchase or date of preparation and used or discarded seven workdays from the date marked;
13. Ensure each refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
14. Ensure frozen foods are stored at a temperature of 0° F or below; and
15. Ensure tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

B. The licensee shall have:

1. At least 14 cubic feet of refrigerator space for each 10 children at a facility; and
2. A three-compartment sink or a dishwasher with a sanitizer cycle.

C. A facility shall have clean dining areas and tables that allow children, staff, and guests to eat together.

D. A facility shall safeguard sharp objects.

R21-7-231. Sleeping Arrangements; Areas; Furnishings

A. The licensee shall provide a child in care with a bedroom.

1. The licensee shall not use mobile dwellings or vehicles as sleeping quarters.
2. The licensee shall provide a child with bedroom space that:
    a. Has a direct source of natural light; and
    b. Provides at least three feet of floor space between beds and is a minimum:
        i. 74 square foot floor area for a single occupant;
        ii. 50 square foot floor area for each occupant in a multiple sleeping area; or
        iii. 40 square foot floor area for each crib.
3. The licensee shall provide each child with an individual bed that:
    a. Is not a sleeper sofa, rollaway bed, couch, cot, mat, bassinet, infant swing, infant rocker, or a portable crib such as a Pack ‘n Play;
    b. Is proportional to the child’s height;
    c. Is proportional to the child’s weight and at least 30 inches wide;
    d. Has a solidly constructed bed frame that is in good condition, free from defects, and keeps the mattress off the floor;
    e. All mattresses shall be:
        i. Sanitary and free from stains,
        ii. Free from holes and tears,

iii. Free from protruding springs or mattress foam,

iv. In service less than seven years from the date of purchase and in good condition, and

v. Replaced if required by the Department.

4. If the licensee uses a bunk bed or similar style bed in which the top of the mattress is elevated four or more feet above the floor:

a. The bed shall be limited to a double bunk;

b. Shall have sufficient head room to allow the occupant on a top tier to sit up;

c. The top tier shall have guard rails that extend at least five inches above the mattress surface;

d. The top tier shall have cross ties under the mattress foundation;

e. The top tier shall be securely fastened to the side frames; and

f. A child in care less than the age of six years, has a disability that limits mobility, or has a seizure disorder shall not sleep on the elevated mattress.

5. The licensee shall use only cribs that have:

a. Bars or slats no more than 2 3/8 inches apart;

b. A mattress that fits snugly into the crib frame so that there is no space between the mattress and frame;

c. No pillows, blankets, bumper pads, or other soft items or surfaces; and

d. No openings through which a child could place their head.

6. The licensee shall provide sheets, pillowcases, and blankets for each child and shall:

a. Ensure bedding is clean and in good repair, without tears or stains;

b. Ensure that sheets and pillowcases are washed at least weekly and more frequently if necessary; and

c. Use water resistant bedding when necessary.

7. The licensee shall provide each child with a dresser or other storage space adequate to contain the child's belongings and a designated space for hanging clothing in the child's bedroom.

8. The licensee shall not have locks on a child's bedroom door.

9. The child shall not share a bed.

10. A child in care, age 6 or older, shall not share a bedroom with a child of the opposite gender.

11. A child in care shall not share a bedroom with an adult or young adult unless one of the conditions listed in this subsection is met:

a. The child is sharing a room with their parent.

b. The child's service plan contains specific reasons and authorization for a shared bedroom from the Placing Entity, or if there is no Placing Entity, the parent or guardian who placed the child.

c. The child has a temporary need for special adult care during sleeping hours and the need is verified by a licensed medical professional and documented in the child's service plan.

d. The child has regularly shared a bedroom with another child in the licensee's care who has reached age 18, and the Placing Entity, or if there is no Placing Entity, the parent or guardian who placed the child, and licensee agree that continuing the shared arrangement is in the best interests of both the child and the young adult.

B. If a child in care has a documented record of behavior that poses a risk to other children, the licensee, in consultation with the Placing Entity, or if there is no Placing Entity, the parent or guardian who placed the child, shall develop special sleeping arrangements for that child, to minimize the risk of harm to other children. The licensee shall document the arrangements in the child's service plan.

R21-7-232. Bathrooms

The licensee shall maintain a bathroom and bathroom fixtures in good operating and sanitary condition, and shall:

1. Ensure that each facility bathroom is equipped with:
   a. Cold and hot running water, with enough hot water to allow each child in care a daily bath or shower;
   b. Clean hand towels in good condition;
   c. Clean shower curtain or door, properly installed, and in good repair free from mold and mildew;
   d. Toilets and bathtubs or showers that allow a child in care to have privacy, as developmentally appropriate; and
   e. Sufficient toilet paper, towels, soap, and other items required to maintain good personal hygiene, or shall provide a child in care with personal supplies of these items;
2. Not permit a child in care age 5 or more to use a bathroom with someone of a different gender at the same time; and
3. Equip a bathroom to facilitate maximum self-help by a child in care through one or more of the following methods:
   a. Providing a child with a step-stool to reach a sink,
   b. Providing smaller sized bathroom fixtures,
   c. Providing training toilets,
   d. Placing towel racks and dispensers at lower heights, or
   e. Other similar or comparable methods.

R21-7-233. Other Facility Space; Staff Quarters

A. The licensee shall ensure that a facility has:

1. A place other than a child in care's living area to serve as an administrative office for records, secretarial work, and bookkeeping; and
2. Space for private discussions and counseling sessions.

B. If a licensee has direct care staff who reside at the facility, the licensee shall provide those staff with sleeping space that is separate from a child in care's living or sleeping area, including a separate bathroom. The licensee shall provide any child of these staff, who also resides at the facility, with a residential environment that meets the requirements of this Article for a child in care, unless the child shares a bedroom with the staff.

C. If the licensee has direct care staff who reside at the facility, the staff must maintain their residence to the standards of this Chapter and ensure proper supervision of the staff's child at all times.

R21-7-234. Fire; Emergency; Fire Prevention

A. The licensee shall have a written procedure for staff and any child in the facility to follow in case of emergency or disaster. The procedures shall include:

1. Provisions for the evacuation of buildings, including the evacuation of a child with a physical disability;
2. Assignment of staff to specific tasks and responsibilities;
3. Instructions on the use of alarm systems and signals;
4. Specification of evacuation routes and procedures, with clearly marked diagrams; and
5. Notification of an unusual incident as required by R21-7-207.

B. The licensee shall prepare staff and each child in care to respond to an emergency as described in this subsection.

1. The licensee shall train all staff to perform assigned tasks during an emergency, including the location and use of fire-fighting equipment.
2. The licensee shall train staff and each child to report fires and other emergencies in accordance with written emergency procedures.
3. The licensee shall review the evacuation plan with a child in care as appropriate to the child's age and developmental level:
   a. Within 72 hours if the facility relocated; and
   b. At least once each year following the child's placement in the facility.

C. The licensee shall have and maintain fire prevention and safety equipment required by this subsection and A.A.C. Title 21, Chapter 8, Article 1.

1. The licensee shall clean and test each smoke detector at least every three months. The licensee shall keep a written record of the cleaning and testing at the facility.
2. The licensee shall have a qualified person inspect and, if necessary, recharge a fire extinguisher at least once a year and immediately after use.
3. The licensee shall:
    a. Document the date that a fire extinguisher is charged and the person or Agency responsible for charging it, and
    b. Attach the documentation to the extinguisher.

D. The licensee shall post evacuation procedures in clearly visible locations throughout all buildings.

E. The licensee shall ensure that exits above ground level have an outside fire escape or fire-resistant stairwell approved by a fire inspector.

R21-7-235. General Safety

A. The licensee shall house a non-ambulatory child or a child less than six years of age on the ground floor.

B. The licensee shall safeguard substances and items in a manner appropriate to protect the youngest child in care in the facility.

C. The licensee shall maintain water that is accessible to a child in care for personal use at a temperature at or below 120° F.

D. Smoking

1. The licensee shall not expose a child in care to tobacco products or smoke of any substance through any delivery system including tobacco, e-cigarettes, or marijuana.
2. The licensee shall not allow any person to use tobacco products or smoke of any substance through any delivery system including, tobacco, e-cigarettes, or marijuana inside buildings.
3. A licensee shall not allow a child in care to use or possess tobacco, e-cigarettes, or marijuana products.

E. Gas Appliances

1. The licensee shall have a licensed and bonded heating and cooling technician annually inspect all gas-fired devices at a facility. The licensee shall get a written report of the inspection for submission to the Department at the time of license renewal.
2. The licensee shall equip all gas-fired devices with an automatic pilot gas shut-off control.
3. The licensee shall remove the valves from unused gas outlets and cap the disconnected gas line with a standard pipe cap.
4. The licensee shall not use unvented water heaters.

5. The licensee shall not use kerosene or gasoline for lighting, cooking, or heating.

6. If the licensee uses a natural or propane gas burning device inside a facility, the licensee shall:

a. Install, test, and check carbon monoxide monitoring equipment in a facility's residential environment according to the manufacturer's instructions;

b. Maintain the monitoring equipment in good working condition;

c. Keep a copy of the manufacturer's instructions; and

d. Keep a record of the tests at the facility.

F. A licensee shall post:

1. The address and telephone number of the facility; and

2. Emergency telephone numbers, including 911, and non-emergency telephone numbers, including, fire, police, crisis hotline, and agency emergency number.

G. A licensee shall ensure that electrical outlets have safety plugs or plates when any child residing in the residential group care facility is age six years or less.

H. A licensee shall maintain lawn and garden equipment and maintenance tools and equipment in good repair, and shall allow children to use them only under the supervision of staff. Depending on the developmental level of the child, the supervision need not be direct supervision.

I. A licensee shall ensure that hot water or steam radiators, pipes or other heating devices are safeguarded.

R21-7-236. Pools

A. The licensee shall comply with A.A.C. Title 21, Chapter 8, Article 1.

B. The licensee shall ensure that at least one of the staff supervising a child in a pool shall remain out of the water.

R21-7-237. Access; Transportation; Outings

A. A facility shall be accessible by motor vehicles including emergency service vehicles.

B. Transportation

1. The licensee shall provide, arrange, or negotiate responsibility for arranging, with the Placing Entity, or if there is no Placing Entity, the parent, or guardian who placed the child, transportation required to implement a child in care's service plan.

2. The licensee shall provide staff supervision in any vehicle the licensee uses to transport a child in care.

3. The licensee shall tell the driver or staff about a child in care's particular needs, behavior, or problems that may reasonably cause difficulties during transportation, including seizures, tendency toward motion sickness, disability, anxiety, or other phobias.

C. Outings

1. The licensee shall have written policy and procedure to govern situations when a child in care temporarily leaves the facility on a visit or outing with a person other than a staff. The procedure shall include:
   a. A method for documenting the child's location, the duration of the activity, and the anticipated and actual time of the child's return;
   b. The name, address, and telephone number of the person responsible for the child while the child is absent from the facility; and
   c. A reference to the licensee's policy detailed in R21-7-209 if the child does not return.
2. For every facility outing that is not part of the daily routine, the licensee shall maintain at the facility a record of the following information:
   a. The name of each child in care participating in the outing,
   b. The name of each direct care staff participating in the outing,
   c. A contact number for staff to be reached during the outing,
   d. Departure time and anticipated return time,
   e. The agency vehicle make and model used for the outing, and
   f. Name and location of the destination.
3. The licensee shall give the driver of a vehicle written emergency contact information on each child in care who is participating in the outing and riding with that particular driver.
4. The direct care staff supervising the child in care shall keep the following information during the outing:
   a. Each child's medication requirements, if any;
   b. Common and known potential adverse reactions a child may have to a medication;
   c. Adverse reactions a child may have as the result of delay in administration of medication; and
   d. Any other adverse reaction a child is likely to have due to the child's special needs, including allergic reactions to particular substances or insects.
5. The licensee shall obtain written permission for out-of-state outings from the child's Placing Entity, or if there is no Placing Entity, the parent or guardian who placed the child.
6. If a deviation occurs during the course of a daily routine involving transportation, staff shall communicate details of the deviation including the location and anticipated return time to a designated staff within the Agency.

D. Extended Outings

1. For any outing that lasts more than 48 hours, the licensee shall obtain written permission from the child in care's Placing Entity, or if there is no Placing Entity, the parent, or guardian who placed the child.
2. For any outing that lasts 30 or more consecutive calendar days, the licensee shall ensure that any child who is in the custody of the Department has court permission for the outing.

R21-7-238. Special Provisions for Shelter Care Facilities

A. The licensee operating a residential group care facility for an intended short term period shall be licensed as a shelter care facility and shall comply with all the requirements of this Chapter, unless otherwise provided in this Section.

B. Admission Policy and Practice

1. If a child in care has already been in shelter care for more than 21 calendar days, a licensee shall not admit the child into shelter care at the licensee's facility, or permit the child to continue residing at the licensee's facility, unless the licensee has requested to have a multidisciplinary team meeting with the child's Placing Entity, or if there is no Placing Entity, the parent, or guardian, to:
   a. Assess the child through a review of the child's records or in person,
   b. Develop a service plan for the child, and
   c. Document the request and outcome in the child's record.
2. When a child self-refers to a shelter care facility, the licensee shall, within 24 hours of the child's arrival:
   a. Notify the Department or the child's parent or guardian; and
   b. Obtain written consent for the child's continued placement from the Placing Entity, or if there is no Placing Entity, from the parent or guardian, or by obtaining a court order.
3. The licensee may admit a child prior to obtaining medical information and consents as required by R21-7-211. The licensee shall attempt to obtain the medical consents from the Placing Entity, parent, or guardian who placed the child within two workdays of the child's admission. The licensee shall document details of their attempts.
4. At the time of a child's admission, the licensee is not required to obtain the comprehensive intake assessment required by R21-7-211, but shall work with the Placing Entity, or if there is no Placing Entity, parent or guardian to compile information on and assess the child's current social, behavioral, psychological, developmental, health, legal, family, and educational status, as

applicable to the child. The licensee shall document efforts to obtain the comprehensive intake assessment.

5. If the child in care remains in shelter for over 21 calendar days the provisions of R21-7-224 shall apply.

C. Unless a child remains in continuous shelter care for more than 21 consecutive calendar days, a licensee operating a shelter care facility is not required to comply with R21-7-120 regarding service planning, but shall comply with all applicable court orders.

D. The licensee shall maintain a record for each child in a shelter care facility as prescribed in R21-7-121 except as otherwise provided in subsections (B) and (C).

R21-7-239. Special Provisions for Transitional Program and Independent Living Program

A. The licensee operating a residential group care facility that provides transitional programs or independent living programs shall comply with the requirements in this Chapter.

B. The licensee operating a transitional program or an independent living program shall not provide services related to these programs to a child less than 12 years of age.

C. The licensee that operates a residential group care facility providing a transitional program or an independent living program may request an alternative method of compliance as prescribed in R21-7-112 that ensures the safety and well-being of a child in care, age 12 and older, who participates in a transitional program or independent living program.

D. The licensee that operates a residential group care facility providing a transitional program or an independent living program shall provide adequate safety information and individualized instruction to promote:

1. The safe use of a substance or item that is required to be safeguarded under the Life Safety Inspection rules in A.A.C. Title 21, Chapter 8, Article 1;
2. The safe use of a substance or item that is necessary for self-sufficiency, such as laundry and cleaning supplies, tools, razors, and kitchen knives; and
3. The understanding of how to summon assistance in the event of an emergency.

R21-7-240. Special Provisions for Residential Group Care Facility with Multi-Purpose Premises

A. The licensee operating a residential group care facility that provides program and services in a Multi-Purpose Premises developed and managed by the licensee shall:

1. Have a detailed map of the community that:
   a. Identifies each structure and area, including the use and purpose;
   b. Identifies all structures and areas accessible to children in care;

c. Identifies all structures and area restricted from a child in care; and

d. Identifies all structures and areas in which visitors not associated with the residential group care program are permitted and restricted;

2. Have a written policy and procedure governing the Multi-Purpose Premises that:

a. Outlines the restrictions identified in subsection (A)(1);

b. Outlines agency actions if a child in care gains access to any restricted area or structure; and

c. Outlines agency methods to communicate these restrictions to visitors, any other adult or child not in care residing in the community, staff, and children in care; and

3. Submit a request for an alternative method of compliance as prescribed in R21-7-112.

B. The licensee operating a residential group care program in a Multi-Purpose Premises shall comply with all the requirements of this Chapter, unless otherwise approved in an alternative method of compliance as prescribed in R21-7-112.

ARIZONA DEPARTMENT OF CHILD SAFETY

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21 A.A.C. 7 Department of Child Safety – Child Welfare Agency Licensing

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

June 2023

1. Identification of the rulemaking

A.R.S. § 8-503 authorizes the Department of Child Safety (DCS or Department) to establish rules, regulations and standards for the licensing of child welfare agencies and exercise supervision over all child welfare agencies. A.R.S. § 8-505 requires a child welfare agency to be licensed by the Department and authorizes the Department to issue and renew licenses for child welfare agencies. A.R.S. § 8-506.01 assigns the Department the authority to deny, suspend or revoke the license of any child welfare agency that willfully violates or fails to maintain the standards of care prescribed by the Department.

The Department is adopting rules under Title 21 Child Safety to implement A.R.S. §§ 8-503, 8-505 and 8-506.01 and any other applicable requirements of A.R.S. Title 8, Chapter 4, Article 4 (A.R.S. §§ 8-501 et seq) dealing with child welfare agencies. These rules will relocate those currently found under Title 6, Chapter 5, Articles 69 and 74. The Department has not received applications nor has licensed an agency that wants to operate as an outdoor experience program as defined in Title 6, Chapter 5, Article 74 for many years. An outdoor experience program does not fit into current practice and is not included in these proposed rules. Any outdoor experience programs for providing behavioral health services to children continue to be licensed by the Arizona Department of Health Services.

The rules under Article 1 pertain to all applicants for a child welfare agency license, initial, amendment, and renewal and other general licensing requirements. A Child Welfare Agency includes an agency operating as a Child Placing Agency and/or as a residential group care facility or shelter as defined in A.R.S. § 8-501. The rules under Article 2 pertain specifically to licensees or applicants of a residential group care facility or shelter.

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

The Department of Child Safety (DCS or Department) is authorized by Arizona Revised Statutes to license Child Welfare Agencies, which includes Child Placing Agencies and Residential Group Care Facilities. With this rulemaking the responsibilities for licensing Child Welfare Agencies currently located in Title 6 (Department of Economic Security) are

relocated to Title 21 (Department of Child Safety). The rules currently under Title 6, Chapter 5, Articles 69 and 74 are outdated; this rulemaking will also update licensing requirements, expectations, and practices. While other rules in Title 21 were created and implemented in 2015 and 2016, the rules pertaining to Child Placing Agencies and Residential Group Care Facilities were not completed at that time and remained under Title 6. The Department did not conduct a financial analysis because each child welfare agency (child placing agency and residential group care facility) is an autonomous unit, making it difficult to calculate the financial impact as a whole. However, the Department can state that any increased cost would be minimal, in reference to a child welfare agency operating as a residential group care facility, as the majority of the rules are already incorporated into contracts with most said agencies and facilities. As of March 30, 2023, there are 85 licensed agencies operating as a residential group care facility or shelter, and of the 85 licensed agencies, 77 (91%) of those agencies have a contract with the Department. Furthermore, as of March 30, 2023, those 85 licensed agencies have a total of 249 residential group care facilities and 13 shelter. A total of 241 of those residential group care facilities/shelters fall under a contract with the Department. In addition, many of the new rules are being enacted in order to comply with federal and state laws as well as updating practices to help ensure the safety and well-being of children in care. As mentioned, a Child Welfare Agency also includes a Child Placing Agency. As of March 29, 2023, there are seven (7) child placing agencies licensed. Child placing agencies do not contract with the Department of Child Safety as Child Welfare Agencies.

Prior to 2021, there was no statute authorizing the Department to charge fees for licensing residential group care facilities. However, in 2021 the 55th Legislature, First Regular Session passed HB2399 creating A.R.S. § 8-467 which allows the Department to charge a licensing fee pertaining only to residential group care facilities that met a very specific criteria. A.R.S. § 8-467 defines "noncontracting licensee" as "a licensee that does not contract with this state, that contracts with the federal government, that receives only federal monies and that employs individuals who provide direct services to children." Currently, the recently created statute impacts license applicants such as Southwest Key and Neighborhood Ministries, agencies contracting with the Office of Refugee Resettlement (ORR) program.

As of April 2023, there is also one other agency seeking licensure for the same purposes to contract with ORR. The Department charges $600 per licensed bed, annually, for the placement of children to those agencies that fall under the criteria set in A.R.S. § 8-467. Southwest Key and Neighborhood Ministries are agencies responsible for the care of 1526 and 10 children, respectively, as of April 2023. As such, the Department funded 10 new positions to meet the increased demands of licensing and monitoring residential group care facilities that are only contracted with the ORR program. Pursuant to statute, the Joint Legislative Budget Committee (JLBC) was notified of these new positions through the Department's regular quarterly reporting requirements, and specifically, through its report submitted to the Committee for the April 27, 2021 meeting.

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: Angie Trevino, Rules Development Specialist
Address: Department of Child Safety
3003 N. Central Avenue
Phoenix, AZ 85012
Telephone: (602) 619-3163
Email: Angelica.Trevino@azdcs.gov
Web site: www.dcs.az.gov

4. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules.

a. Cost bearers
- Child Welfare Agencies (Residential group care facilities, shelters, and child placing agencies)
- Department of Child Safety (DCS or Department)

b. Beneficiaries
- Child Welfare Agencies (Residential care facilities, shelters, and child placing agencies)
- Vendors to Child Welfare Agencies

- Department of Child Safety (DCS or Department)
- Children in out-of-home care
- Children in the physical custody of the federal government
- Municipal Fire and Safety Inspection Divisions (compliance)
- City zoning divisions (Compliance)
- General public (safe homes in neighborhood)

5. Cost/Benefit Analysis

The cost bearers and beneficiaries are as previously listed under #4. The Office of Licensing and Regulation (OLR) is a program unit (Administration) within the Department of Child Safety (DCS or Department) charged with the responsibilities that pertain to Title 6, Chapter 5, Articles 69 and 74, soon to be Title 21, Chapter 7. As a result of 2021, legislation and passing of House Bill 2399, the Department hired 10 new positions. There is no political subdivision affected by these rules.

Agencies

Chapter 7 contains rules pertaining to licensure and operation of child welfare agencies as defined in A.R.S. § 8-501. This rulemaking relocates the rules currently under the Department of Economic Security (DES) in Title 6, Chapter 5, Articles 69 and 74 to the Department of Child Safety (DCS), Title 21, Chapter 7. The rules under Articles 69 and 74 are outdated, and in addition to these rules transferring to Title 21 (DCS), these rules include updates that reflect current practice and any updates as a result of new or amended Arizona Revised Statutes. A Child Welfare Agency can operate as a Child Placing Agency or a residential group care facility/shelter. As of March 30, 2023, there are seven (7) child welfare agencies operating as a Child Placing Agency and 85 operating as a residential group care facility/shelter care facility. These 85 agencies are responsible for the operation of 249 residential group care facilities and 13 facilities operating as shelter care. Of the 85 agencies, 34 of them hold an administrative office separate from the residential group care facility where children reside that OLR also inspects and monitors. Of the 85 licensed child welfare agencies operating as residential group care facilities, 77 (91%) of them contract with the Department. And of the 249 residential group care facilities and 13 shelters, 96% fall under

the contract with the Department. Child Placing Agencies do not contract with the Department. As of March 17, 2021, 55th Legislature, First Regular Session authorized DCS to charge a fee associated with licensing to agencies that meet the criteria set in A.R.S. § 8-467. Agencies that do not meet the criteria set in A.R.S. § 8-467 are not charged a fee associated with licensing including new, renewal, or amendment of Child Welfare Agency licenses. The cost impact of the licensing rules in relation to all the regulated entities is associated with costs with becoming and maintaining licensure, such as:

- Hiring, fingerprinting, investigating, training and paying staff
- Providing an annual audit prepared by a CPA (with this rulemaking this will only be applicable to agencies with an annual income of $250,000 or more)
- Insurance
- Operation of a business
- Building(s), maintenance, equipment, overhead, etc., for the operation of the business

These agencies play an important role in providing services for children who need out-of-home care for 24/7 care.

As a result of A.R.S. § 8-467 the Department determined to charge a fee of $600, annually, per bed made available for the placement of children to those agencies that fall under the criteria set in the 2021 new statute. There are currently three child welfare agencies seeking licensure (or licensed) that meet these new criteria. Given the number of children being served or potentially being served and the staff employed by agencies to provide the services per their contract with the Office of Refugee Resettlement (ORR) program, the Department could not provide the oversight and monitoring necessary and required for licensing without charging such agencies a fee. The Department calculated the fee it charges based on the need for the 10 additional FTE and their relative cost and divided it by the projected number of new beds that Southwest Keys was going to request. These dollars collected are placed into the Child Welfare Licensing fund, which funds FTEs that perform the agencies licensing and monitor functions that meet the criteria in A.R.S. § 8-467. The Department will not make a profit by charging these fees and will use these funds to cover the Department's cost to have sufficient staff to license and monitor the agencies that fall under A.R.S. § 8-467. The rules

in this rulemaking will not pose a significant burden and cost to those agencies licensed or applying for licensure under the new statute. The proposed rules in this rulemaking include requirements agencies that contract with the federal government are already required to comply with.

Expenditures for the Department of Child Safety

The responsibility of monitoring compliance with the rules in this rulemaking fall under the Office of Licensing and Regulation (OLR), a program unit (Administration) within the Department of Child Safety (DCS or Department). DCS OLR consists of the Program Administrator, Policy Specialist, Quick Connect (database) Project Coordinator (who also manages the Background Check Unit), Data Management Analyst, and three (3) specialized units. One (1) of these units is the Child Welfare Licensing Unit which will enforce and monitor the rules in Chapter 7 (currently enforce and monitor the rules under Title 6, Chapter 5, Articles 69 and 74). The Child Welfare Licensing Unit consists of 20 full-time employees: two (2) Managers and 18 Licensing Specialists. These numbers include the created positions to properly monitor agencies whose licensure falls under the criteria in A.R.S. § 8-467.

Functions pertaining to the processing and licensing of Child Welfare Agencies include:

- Support and technical assistance to those inquiring or requesting assistance in presenting an application for a Child Welfare Agency.
- Provide interested parties with the Child Welfare Agency application.
- Review administratively and substantively new, renewal, and amendment licensing applications and the supporting documentation that must accompany the application.
- Identify missing documentation and information needed to process.
- Document, including studies conducted for Initial, Renewal, and Amendment applications, disposition letters from licensing inquiries or other site visits.
- Provide on-going technical assistance to licensed agencies.
- Conduct monitoring inspections: annually (announced and unannounced)
- Make licensing determinations (issue, deny, provisional)
- Issue and track corrective action plans
- Follow-up with licensing complaints and allegations of abuse or neglect

- Identify and complete adverse licensing actions, such as suspension, denials, and revocations.
- Respond and process appeals to adverse actions.

Funding

The agencies that operate as residential group care facilities/shelters and that are contracted with the Department, received $91,620,820 million from State contracts in BFY21. The following funding information applies to the Office of Licensing and Regulation (OLR) as a whole and is not specific to the functions those performed as a result of licensing per the rules in Title 6, Chapter 5, Articles 69 and 74 (soon to be Title 21, Chapter 7). In BFY22, DCS budgeted $4.4M to OLR operations. This included 52 FTE for all units within OLR, supplies, fingerprinting, overhead, employees, etc. The funding source is both state General Fund and federal funds. During the first six months of BFY 2022, the Department actively recruited staff specific to implementing A.R.S. § 8-467. Costs did not materialize until January 2023, resulting in 6 months of staffing costs equaling $298,000. Currently, the Department only funds salaries and fringe benefits from the Child Welfare Licensing Fund. The Department projects to expend $708,000 annually funding 10 FTE. In BFY 2022, the Department licensed 1,607 beds, and collected $964,200 in licensing fees and forecasts BFY 2023 to remain constant.

The Department believes that the operation of the Office of Licensing and Regulation imposes the least cost and burden to the regulated public and the general public, while safeguarding the interests of the protected public.

6. 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.

There is no known direct impact on private and public employment in businesses and political subdivisions of this state directly affected by these rules.

7. A statement of the probable impact of the rules on small business.

7.1. Identification of the small businesses subject to the rules.

Small businesses subject to the rules may include child welfare agencies

7.2. The administrative and other costs required for compliance with the rules.

There are no costs charged to child welfare agencies which do not meet the criteria specified in A.R.S. § 8-467. Child welfare agencies meeting the criteria of A.R.S. § 8-467 are charged $600 annually, per bed, for the placement of a child in out-of-home care. Administrative and other costs will differ among the licensed agencies depending on their program, number of staff employed, number of children they provide services to, and their business management and organization.

7.3. A description of the methods that the agency may use to reduce the impact on small businesses.

Given that each agency is autonomous, has their own program, and has their own methods for securing income, the methods to reduce the impact is unknown. More details provided in #9 of this report.

7.4. The probable costs and benefits to private persons and consumers who are directly affected by the rules.

The benefits to private persons and consumers who are directly affected by the rules includes providing them with clear information on what is required of them when applying for child welfare agency license, standards to maintain compliance, and consequences for non-compliance.

8. A statement of the probable effect on state revenues.

The Department of Child Safety does not know of any direct or indirect effect of the rulemaking on state revenues.

9. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

The proposed rules, as written as a means to secure the care and safety of children receiving services from a Child Welfare Agency. Child Welfare Agencies, as documented in their documentation of the need for the services they are providing, may each provide services that may be distinct from services provided by another agency (and organization may also differ).

The rules do not dictate the type of individual services each Agency provides (or how they organize themselves). Additionally, once licensed the Agencies may seek contracts, grants, or other financial means to operate their business. Each contract and/or grant has the potential to vary. Given the individuality of each business it is impossible to determine the financial impact the rules will have on these businesses. Some rules that are new to rules, may not be new to the Agency based on their contract and the services they are providing. In addition to rules addressing the care, safety, and services to children in out-of-home care and given all the potential differences between Agencies, their business, their operation, and their contracts or other means of receiving financial means, it is not possible to determine if there is any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking. The rules do allow Agencies to request an "alternative method of compliance" to the rules in which the Department of Child Safety will analyze possible impacts on care and safety of children in out-of-home care.

10. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.

Not applicable

ARTICLE 73. REPEALED & RENUMBERED

Editor's Note: Article 73 was repealed except for Sections R6-5-7307 and R6-5-7308 which were both renumbered, effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7301. Repealed

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7302. Repealed

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7303. Repealed

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7304. Repealed

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7305. Repealed

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7306. Repealed

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7307. Renumbered

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7307 renumbered to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7308. Renumbered

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Section R6-5-7308 renumbered to R6-5-7471 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7309. Repealed

Historical Note
Adopted effective January 21, 1985 (Supp. 85-1). Repealed effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

ARTICLE 74. LICENSING PROCESS AND LICENSING REQUIREMENTS FOR CHILD WELFARE AGENCIES

OPERATING RESIDENTIAL GROUP CARE FACILITIES AND OUTDOOR EXPERIENCE PROGRAMS

R6-5-7401. Definitions

In addition to the definitions contained in A.R.S. § 8-501, the following definitions apply in this Article:

1. "Abandonment" has the same meaning ascribed to "abandoned" in A.R.S. § 8-531(1).
2. *"Abuse" means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist pursuant to § 8-821 and which is caused by the acts or omissions of an individual having care, [physical] custody and control of a child. Abuse includes:*
   (a) Inflicting or allowing sexual abuse pursuant to § 13-1404, sexual conduct with a minor pursuant to § 13-1405, sexual assault pursuant to § 13-1406, molestation of a child pursuant to § 13-1410, commercial sexual exploitation of a minor pursuant to § 13-3552, sexual exploitation of a minor pursuant to § 13-3553, incest pursuant to § 13-3608 or child prostitution pursuant to § 13-3212.
   (b) *Physical injury to a child that results from abuse as described in § 13-3623, subsection C.* A.R.S. § 8-201(2).
3. "Accredited" means the approval and recognition of an institution of learning as maintaining those standards requisite for its graduates to gain admission to other institutions of higher learning or to achieve credentials for professional practice. An example of an accrediting body is the North Central Association of Colleges and Universities.
4. *"Administrative completeness review time frame" means the number of days from [the Licensing Authority's] receipt of an application for a license until [the Licensing Authority] determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.* A.R.S. § 41-1072(1).
5. "Adverse action" means suspension or revocation of a license, denial of a renewal license, or making a material change in licensing status.
6. "After-care" means services provided to a child after the child is discharged from a licensee's care and may also include services for the child's family.
7. "Applicant" means a person who submits a written application to the Licensing Authority to become licensed or to renew a license to operate a child welfare agency or a residential group care facility.
8. "Barracks" means a building that:
   a. Is designed and constructed or remodeled for the specific purpose of housing large numbers of children of the same gender;
   b. Has wide, open sleeping areas for children, under one roof;
   c. Is identified and described as a barracks or dormitory in the agency's promotional and organizational materials; and

d. Is made known as a barracks or dormitory to placing agencies and persons considering placement of a child.

9. "Behavior management" means the policies, procedures, and techniques a licensee uses to control conduct as prescribed in R6-5-7456.
10. "Child placing agency" means a person or entity that is licensed or authorized to receive children for care, maintenance, or placement in a foster home, because:
    a. The Department has licensed the person or entity as a child welfare agency pursuant to A.R.S. § 8-505; or
    b. It is an entity with statutory authorization to place children.
11. *"Child welfare agency" or "agency"*
    a. Means:
        i. Any agency or institution maintained by a person, firm, corporation, association, or organization to receive children for care and maintenance or for 24-hour social, emotional, or educational supervised care or who have been adjudicated as a delinquent or dependent child.
        ii. Any institution that provides care for unmarried mothers and their children.
        iii. Any agency maintained by the state, or a political subdivision thereof, person, firm, corporation, association, or organization to place children or unmarried mothers in a foster home.
    b. Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to Title 36, Chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques. A.R.S. § 8-501(A)(1).
12. "Corrective action" means a specific course of conduct an agency will follow to remedy violations of the licensing requirements prescribed in this Article, within a specified period of time.
13. "Corrective action plan" means a written document describing an agency's corrective action, as prescribed in R6-5-7418.
14. "CPS" means Child Protective Services, a Department program responsible for investigating reports of child maltreatment.
15. "CPSCR" means the Child Protective Services Central Registry, a computerized database, which CPS maintains according to A.R.S. § 8-804.
16. "De-escalation" means a method of verbal communication or non-verbal signals and actions, or a combination of signals and actions, that interrupt a child's behavior crisis and calm the child.
17. "Department" or "DES" means the Department of Economic Security.
18. "Developmentally appropriate" means an action that takes into account:
    a. A child's age and family background;
    b. The predictable changes that occur in a child's physical, emotional, social, cultural, and cognitive development; and
    c. A child's individual pattern and timing of growth, personality, and learning style.
19. "DHS" means the Department of Health Services.
20. "Direct care staff" means the facility staff who provide primary personal care, guidance, and supervision to children in care.
21. "Discharge plan" means:
    a. A written description of:
        i. A program of action to prepare a child for release from a facility; and
        ii. After-care;
    b. That is developed by a licensee in cooperation with a child's service team.
22. "Discipline" means a teaching process through which a child learns to develop and maintain the self-control, self-reliance, self-esteem, and orderly conduct necessary to assume responsibilities, make daily living decisions, and live according to accepted levels of social behavior.
23. "Document" means to make and retain a permanent written or electronic record of a fact, event, circumstance, observation, contact, or communication.
24. "Exploitation" means the act of taking advantage of, or to make use of a child selfishly, unethically, or unjustly, for one's own advantage or profit, in a manner contrary to the best interests of the child, such as having a child panhandle, steal, or perform other illegal activities.
25. "Facility" or "residential group care facility" means a living environment operated by a child welfare agency, where children are in the care of adults unrelated to the children, 24 hours per day.
    a. "Facility" does not include a program licensed as a behavioral health service agency by the Department of Health Services under A.R.S. § 36-405 and 9 A.A.C. 20.
    b. "Facility" does include an outdoor experience program.
    c. When used in reference to an outdoor experience program, "facility" means the campsite at which or the mobile equipment in which children are housed.
26. "File" means a place where information is stored through written, electronic, or computerized means.
27. "Foot candles" means a unit of luminous intensity that can be measured with a light meter.
28. "Governing body" means an individual or group of individuals responsible for the policies, activities, and operations of a facility, as prescribed in R6-5-7424.
29. "Individual education plan" or "IEP" means a written document that describes educational goals for a particular child and the services the child needs to attain those goals.
30. "Institution" as used in A.R.S. § 8-501(A)(1) means an entity meeting two or more of the following criteria:
    a. Solicits charitable contributions;
    b. Is organized as a profit or non-profit corporation with a board of directors and officers;
    c. Publishes and distributes information or promotional materials about its program or operations;
    d. Requires residents to formally apply for residency through use of application forms or other similar paperwork;
    e. Operates a structured program of care pursuant to written policies, procedures, guidelines, or rules; or
    f. Advertises itself or holds itself out in the community as an institution that provides care or social services.
31. "Institution for Unwed Mothers and Children" means a child welfare agency, as described in A.R.S. § 8-501(A)(1)(a)(ii), that is licensed to care for unmarried mothers who are under age 18 at the time of admission to the agency and the children of those mothers.

32. "License" means a document issued by the Licensing Authority to an individual or non-governmental business, which authorizes the individual or business to operate a child welfare agency in compliance with this Article.
33. "Licensee" means the person or entity holding a license. When used in reference to a duty, task, or obligation, the term "licensee" includes the staff who work at an agency or facility and who are responsible for doing the acts necessary to fulfill the requirements of this Article.
34. "Licensed medical practitioner" means a person who holds a current license as a physician, surgeon, nurse practitioner, or physician's assistant pursuant to A.R.S. §§ 32-1401 et seq., Medicine and Surgery; A.R.S. §§ 32-1800 et seq., Osteopathic Physicians and Surgeons; A.R.S. §§ 32-2501 et seq., Physician Assistants; and A.R.S. §§ 32-1601 et seq., Nursing and R4-19-501(A)(1), Registered Nurse Practitioner, respectively.
35. "Licensing Authority" means the Department administrative unit that monitors and makes licensing determinations for agencies and facilities, including issuance, denial, suspension, and revocation of a license or operating certificate, and imposition of corrective action.
36. "Licensing representative" means a person employed by the Licensing Authority to investigate and monitor applicants and licensees.
37. "Licensing year" means a one-year time period that begins on the date an agency obtains its initial license to operate, and ends one year later.
38. "Living unit" means a specific grouping of children who are assigned to and share a distinct and common physical space within a facility.
39. "Maltreatment" means abuse, neglect, abandonment, or exploitation, of a child.
40. "Material change in licensing status" means, for the purpose of A.R.S. § 8-506.01,
    a. Any of the following actions:
        i. Denial, suspension, or revocation of an operating certificate;
        ii. At any time following issuance of an initial license, imposition of provisional license status, in lieu of a regular license as prescribed in R6-5-7419; or
        iii. A change in a term appearing on the face of a license or operating certificate, including: a.) Geographic area served; b.) Age, number, or gender of children served; or c.) Type of services offered;
    b. But does not include the act of placing an agency on a corrective action plan to bring the agency into compliance with licensing requirements as prescribed in R6-5-7418.
41. "Mechanical restraint" means:
    a. An article, device, or garment that:
        i. Restricts a child's freedom of movement or a portion of a child's body;
        ii. Cannot be removed by the child; and
        iii. Is used for the purpose of limiting the child's mobility;
    b. But does not include an orthopedic, surgical, or medical device that allows a child to heal from a medical condition or to participate in a treatment program.
42. "Medication" means an agent, such as a drug or remedy, used to prevent or treat disease, illness or injury, including both prescribed and over-the-counter agents.
43. "Mobile dwelling" means a structure, such as a trailer or recreational vehicle as defined in A.R.S. § 41-2142(30). Mobile dwelling does not mean a mobile, manufactured, prefabricated, or modular home as defined in A.R.S. § 41-2142(14), (24), or (26).
44. "Neglect" has the same meaning as A.R.S. § 8-201(21).
45. "Non-ambulatory child" means a child who cannot walk due to a physical disability or impairment, rather than as a result of the child's normal age and developmental level.
46. "Onsite" means located on the physical property operated by the licensee for the purpose of the licensee's residential program and includes the contiguous area within:
    a. A single structure;
    b. A cluster of structures;
    c. A complex containing single or multiple family dwelling units with or without separate entrances for each unit;
    d. A campus containing any combination of the residences listed in subsections (a)-(c), as approved by the Licensing Authority.
47. "Operating certificate" means a document that the Licensing Authority issues to a particular facility that is run by an agency holding a license, as prescribed in R6-5-7409.
48. "Outdoor experience program" means a child welfare agency that is located in a cabin or portable structure such as a tent or covered wagon and primarily uses the outdoors to provide recreational and educational experiences in group living, either in a fixed campsite or in a program with an unfixed site, such as a wagon train or wilderness hike.
49. *"Out-of-home placement" means the placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian and includes placement in temporary custody pursuant to § 8-821, subsection A or B, voluntary placement pursuant to 8-806 or placement due to dependency actions.* A.R.S. § 8-501(A)(7).
50. *"Overall time frame" means the number of days after receipt of an application for a license during which [the licensing authority] determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.* A.R.S. § 41-1072(2).
51. Paid staff means:
    a. A licensee's paid employees who work at a facility;
    b. Any temporary worker or independent contractor the licensee uses as a temporary replacement for an employee who is sick, on leave, or unavailable; and
    c. Any independent contractor that the licensee retains to provide children in care with direct services at the facility.
52. *"Parent or parents" means the natural or adoptive mother or father of a child.* A.R.S. § 8-501(A)(8).
53. "Person" means an individual, partnership, joint stock company, business trust, voluntary association, corporation, or other form of business enterprise, including nonprofit or governmental organizations.
54. "Personally identifiable information" means any information which, when considered alone, or in combination with other information, identifies, or permits another person to readily identify the person who is the subject of the information, and includes:
    a. Name, address, and telephone number;
    b. Date of birth;
    c. Photograph;
    d. Fingerprints;

e. Physical description;
f. School;
g. Place of employment; and
h. Unique identifying number, including:
i. Social Security number;
ii. Driver's license number;
iii. License number; and
iv. Court case number.

55. "Physical restraint" means the use of bodily force to restrict a child's freedom of movement, but does not include holding a child firmly enough to prevent the child from harming himself or herself, or others, but gently enough so that the child is not harmed by being held.
56. "Placing agency or person" means the child placing agency, parent, or guardian, having legal custody of a child and who makes the decision to send the child to reside at a particular agency.
57. "Potentially hazardous food" means a food that is:
a. Natural or synthetic and capable of rapid and progressive growth of infectious or toxigenic microorganisms or the growth and production of Clostridium botulinum;
b. Of animal origin and is raw or has been heated;
c. Of plant origin and is heated or consists of raw seed sprouts;
d. A cut melon; or
e. A garlic and oil mixture.
58. "Program director" means a person who meets the qualifications listed in R6-5-7432(B).
59. *"Relative" means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle, or first cousin.* A.R.S. § 8-501(A)(12).
60. "Residential environment" means a facility building or any portion of a facility building that is used for living, sleeping, counseling, dining, or academic purposes.
61. "Restrictive behavior management" means a form of behavior control that is subject to limitations as prescribed in R6-5-7456(D)-(F).
62. "Safeguard" means to use reasonable and developmentally appropriate measures to minimize the risk of harm to a child in care and to ensure that a child in care will not be harmed by a particular object, substance, or activity. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
a. Locking up a particular substance or item;
b. Putting a substance or item beyond the reach of a child who is not mobile;
c. Erecting a barrier that prevents a child from reaching a particular place, item, or substance;
d. Mandating the use of protective safety devices;
e. Providing staff supervision; or
f. Providing a young adult with safety information and generalized instruction necessary to promote the safe and appropriate use of potentially dangerous objects.
63. "Seclusion" means placing a child alone in a room with closed, locked doors that cannot be opened from the inside as prohibited by R6-5-7456(C)(6).
64. "Service plan," which is sometimes described as a "case plan," means a goal-oriented, time-limited individualized program of action that:
a. Describes the plans for treating and providing services to a child and the child's family, and
b. Is developed by a licensee in cooperation with a child's service team.
65. "Service team" means the group of persons listed in R6-5-7441(D)(1) who participate in development and review of a child's service plan and discharge plan.
66. "Shelter care facility" means an agency facility that receives children for temporary out-of-home care, 24 hours per day, when children request care, or are placed in care by a placing agency, a law enforcement agency, a parent, a guardian, or a court.
67. "Significant person" means a person who is important or influential in a child's life and may include a family member or close friend.
68. "Sleeping area" means a single bedroom, or a cluster of two or more bedrooms, located in an adjacent area of a dwelling.
69. "Social worker" means a person with a bachelor's, master's, or doctoral degree in a field of organized work called social work, which is intended to advance the social conditions of a community through provision of counseling, guidance, and assistance, especially in the form of social services to individuals.
70. "Staff" means a licensee's paid staff and unpaid staff.
71. *"Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which* [the licensing authority] *determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.* A.R.S. § 41-1072(3).
72. "Swimming pool" means any on-grounds, natural or man-made body of water that is used for the purposes of swimming, recreation, or physical therapy, and includes spas and hot tubs.
73. "Threat" means an expression of intent to hurt, destroy, or take action prohibited by this Article or the licensee's policies, but does not include an expression of intent to impose a planned consequence for misbehavior if the consequence is not prohibited by this Article or the licensee's policies.
74. "Transitional program" means services provided to a child who is being emancipated as an adult, or a person who has reached the age of 18 and is considered an adult as a matter of law, in order to assist the child or person in becoming independent.
75. "Unpaid staff" means a licensee's volunteers, students, and interns who work, train, or assist at a facility.
76. "Unusual incident" means one or more of the events listed in R6-5-7434(C), (D), (E), or (G).
77. "Work day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Arizona state holidays.
78. "Young adult" means an individual, age 16 to 21, who has been assessed and determined to be appropriate for preparation for adult self-sufficiency. The assessment or determination shall be made by:
a. The placing agency, if the young adult is in the care, custody, and control of the state of Arizona;
b. A parent or legal guardian of the young adult, if subsection (a) does not apply;
c. The licensee, if subsections (a) and (b) do not apply.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7401 repealed; new Section R6-5-7401 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at

12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7402. Request for Initial Application - New Applicant

A. A person who wants to operate a residential group care facility shall initiate the licensing process by contacting the Licensing Authority to request an application for a child welfare agency license.

B. Upon request, the Licensing Authority shall send the prospective applicant an application package containing:
1. A cover letter outlining the licensing process and requesting a responsive letter of intent,
2. An application form,
3. A statement of requirements for licensure, and
4. A form the applicant can use to obtain city or county zoning clearance.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7402 repealed; new Section R6-5-7402 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7403. Letter of Intent - New Applicant

A. The prospective applicant shall prepare a responsive letter of intent to proceed with licensure, and return it to the Licensing Authority. The letter of intent shall include the following information:
1. The applicant's name, address, and telephone and telefacsimile numbers;
2. The name of the applicant's chief executive officer or administrator, with a description of that person's qualifications to operate the agency;
3. A description of community or statewide need for the service or program the applicant intends to provide;
4. A plan for financing the proposed agency during the first year of operation;
5. A statement that the applicant has conferred with the school district where the facility will be located to advise the district of any special needs that children likely to be in care at the facility may have; and
6. A description of the proposed agency's program and services, which shall address the following areas, if applicable:
   a. Any organization from which the applicant will seek accreditation;
   b. The form of on-campus educational programs the applicant will offer;
   c. The characteristics of the children the applicant plans to serve;
   d. The applicant's primary source of referrals;
   e. The frequency and method by which the applicant will provide or offer psychiatric, psychological, or counseling services;
   f. Whether the applicant will employ behavioral health practitioners, or contract for behavioral health services; and
   g. A general description of the number and qualifications of the applicant's professional staff.

B. Within 10 work days of receiving a letter of intent, a licensing representative shall contact the applicant.
1. If the Licensing Authority determines that an applicant may require licensure as a behavioral health service agency under A.R.S. § 36-405 and 9 A.A.C. 20, the Licensing Authority shall refer the applicant to the Department of Health Services for evaluation. In determining whether to refer an applicant to DHS, the Licensing Authority shall consider the factors set forth on Appendix 1.
2. For all other applicants, the representative shall schedule an appointment for a licensing consultation. The appointment shall occur within 45 calendar days of the date the Licensing Authority receives the letter of intent, unless the applicant requests a later consultation.
3. If DHS declines to license an applicant as a behavioral health service agency, and refers an applicant to the Department for licensure as a child welfare agency, the applicant shall contact the Licensing Authority to request a licensing consultation. The Licensing Authority shall schedule the consultation within 45 calendar days of the date of the request, unless the applicant requests a later consultation.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Amended subsection (O), paragraph (1) effective January 21, 1985 (Supp. 85-1). Former Section R6-5-7403 repealed; new Section R6-5-7403 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7404. The Licensing Consultation; Time for Completion of Application

A. At the licensing consultation, a licensing representative shall review the licensing application form with the applicant. The licensing representative shall explain the requirements for licensure and shall advise the applicant about:
1. The information and documentation the applicant must provide to complete the application or licensing process, as set forth in R6-5-7405;
2. The fingerprinting and background checks required by A.R.S. § 46-141 and R6-5-7431;
3. The need for a DHS health and safety inspection of the agency and each facility, and the process for scheduling the inspection;
4. The need to obtain a fire inspection and zoning clearance for the each facility;
5. The need to confer with the local school district to discuss any special educational needs that the children to be served may present;
6. The timelines for submission of application information; and
7. The need for the Licensing Authority to conduct a site inspection as prescribed in R6-5-7406.

B. No later than 60 days after the licensing consultation, the applicant shall provide the Licensing Authority with a complete application package, as prescribed in R6-5-7405(A).

C. If the applicant cannot provide the information within 60 days, the applicant shall contact the Licensing Authority to request an extension of time. The Licensing Authority shall allow an extension for a fixed period of time, which shall not exceed 120 days past the original 60 days.

D. If the applicant fails to provide the information within the time periods specified in subsections (B) and (C), the Licensing Authority shall close the applicant's file and send the applicant a written notice of closure. An applicant whose file has been closed shall reapply.

E. For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins when the applicant submits the application form and the required documentation listed in R6-5-7405(A).

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7404 repealed; new Section R6-5-7404

filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7405. Complete Application; Initial License - New Applicant

A. A complete application package for an initial license of a new agency shall contain the information and supporting documentation listed in this subsection.

1. Identification and background information: agency, facility, administrators.
   a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
   b. Name, title, business address, and telephone and telefacsimile numbers of:
      i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
      ii. The person who serves as the program director as prescribed in R6-5-7432(B);
      iii. The person with delegated authority to act when the CEO is absent;
      iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
      v. Persons holding at least a 10% ownership interest in the applicant; and
      vi. The agency and facility medical directors, if applicable;
   c. The educational qualifications and work history for each person identified in subsection (A)(1)(b), with that person's attached resume, employment application, or curriculum vitae;
   d. A list of the members of the agency's governing body described in R6-5-7424, including: name, address, position in the agency, term of membership, and any relationship to the applicant;
   e. A list of licenses or certificates for provision of medical or social services, currently or previously held by the applicant or persons listed in subsection (A)(1)(b), including those held in this state or another state or country;
   f. A written description of any proceedings for denial, suspension or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (A)(1)(b), including those held in this state or another state or country; and
   g. A written description of any litigation in which the applicant or a person listed in subsection (A)(1)(b) has been a party, including, without limitation, collection matters and bankruptcy proceedings during the 10 years preceding the date of application.
2. Business organization.
   a. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority;
   b. Business organization documents appropriate to the applicant, including:
      i. Articles of incorporation, by-laws, annual reports for the preceding three years; or
      ii. Partnership or joint venture agreement;
   c. For corporations, a certificate of good standing from the Arizona Corporation Commission or comparable entity from a foreign state; and
   d. A statement as to whether the applicant is for-profit or not-for-profit if not explained in other documents already provided.
3. Staff.
   a. A list of the applicant's paid staff, including:
      i. Name;
      ii. Position or title;
      iii. Degrees, certificates, or licenses held;
      iii. Business address;
      iv. Date of hire;
      v. Date of last physical; and
      vi. Date of submission for fingerprinting and background clearance;
   b. Evidence that staff have submitted fingerprints and criminal background information, as prescribed in A.R.S. § 46-141 and R6-5-7431 and obtained a physical exam as prescribed in R6-5-7431(F); and
   c. For any staff whose primary residence is the facility,
      i. The name and date of birth of any persons residing with the staff member;
      ii. Evidence that any adult residing with the staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
      iii. Evidence that the staff member's children who reside at the facility have current immunizations.
4. Financial Stability.
   a. A written, proposed operating budget for start up and the first year of operation;
   b. Verifiable documentation of funds available to pay start-up costs; the funds shall be in the form of cash or written authorization for a line of credit;
   c. Verifiable documentation of funds available to pay operating expenses for the first three months of operations; the funds shall be in the form of cash or written authorization for a line of credit;
   d. Verifiable documentation of financial resources to operate in accordance with the proposed operating budget for the remaining nine months of the licensing year; the resources may include:
      i. Cash;
      ii. Contracts for placement;
      iii. Donations;
      iv. Grants; and
      v. Authorization for a line of credit;
   e. If the applicant or one of the persons listed in subsection (A)(1)(b) has operated any child welfare agency in this state or any other state during the past 10 years, the most recent financial statement and financial audit for that agency, unless the most recent statement or audit is more than 10 years old; and
   f. A certificate of insurance, or letter of commitment from an insurer, showing that the applicant has insurance coverage as prescribed in R6-5-7426.
5. Program.
   a. Informational or advertising material about the agency and its facility;
   b. For each facility, a written description of:
      i. All services the applicant intends to provide;
      ii. The number and type of children the applicant will serve, including: age, gender, special needs, or particular behavior problems;
      iii. The anticipated sources of placement and referral;

iv. Number and qualifications of paid staff who will provide services, including the staff-child ratio, per living unit, during a 24-hour day, for a seven-day week; and

c. Program description, including:
i. Goals and objectives;
ii. Educational activities, with attached copy of Arizona Department of Education approval, if applicable;
iii. Recreational activities;
iv. Food and nutrition, with sample menus;
v. Behavior management practices;
vi. Religious practices, if any; and
vii. Medical services.

6. Documentation, Forms, and Notices. Samples of all documents, forms, and notices which the applicant will use with or provide to children placed with the agency, the parents and guardians of those children, and the persons and entities who place children, including:
a. Agency application for services;
b. Agency placement agreement;
c. Intake form;
d. Child's case file and medical record;
e. Forms for reports to courts and placing agencies;
f. Statement of client rights;
g. Unusual incident reports; and
h. Sample medication logs.

7. Policies and Procedures. The applicant's internal policies, procedures, and operations manual.

8. Physical site and environment.
a. The floor plan for each facility;
b. A DHS health and safety inspection report for each facility;
c. Documentation showing that the local zoning authority verifies that each agency facility complies with all applicable zoning requirements;
d. Fire safety inspection report from the state fire marshall or a local fire department inspector for each facility;
e. Any water supply report as prescribed in R6-5-7458(D);
f. Gas equipment inspection report as prescribed in R6-5-7465(D)(1); and
g. Any other inspection certificates or reports prescribed in this Article, and any building occupancy certificates.

9. Miscellaneous.
a. A statement authorizing the Department to investigate the applicant;
b. The signature, under penalty of perjury, of the agency administrator or person submitting the application, attesting to the truthfulness of the information contained in the application; and
c. The date of application.

B. If an applicant has attached a copy of a policy or procedure which describes the applicant's practice or procedure on a particular issue, the applicant need not separately describe the policy or procedure on the application form, but shall indicate that the description is contained in a particular identified and attached policy.

C. If the Licensing Authority needs additional information to determine the applicant's fitness to hold a license or an operating certificate, ability to perform the duties of a licensee as prescribed in this Article, or ability to fulfill the requirements prescribed in the applicant's policies, procedures, and program description, the Licensing Authority may require the applicant to provide additional information, including a signed form permitting a specifically named person or entity to release information to the Licensing Authority.

D. An agency which does not have or is unable to obtain all or part of the information or supporting documentation listed in subsection (A) shall so indicate in a written statement filed with the application. The written statement shall explain why the information or documentation is unavailable.

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7405 repealed; new Section R6-5-7405 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7406. Site Inspection

A. After receiving a complete application package, the Licensing Authority shall notify the applicant that the application is complete, and shall schedule the applicant for a site inspection, which may require more than one visit to a site.

B. The site inspection shall begin no later than 45 days after the Licensing Authority receives the applicant's completed application package.

C. During the site inspection, the licensing representative shall:
1. Inspect the facility to ensure that any deficiencies identified in the DHS inspection report have been remedied;
2. Verify that the facility meets the requirements of this Article;
3. Review the applicant's policies and procedures;
4. Review model client files;
5. Review personnel files;
6. Inspect the applicant's books, records, and proposed forms;
7. Interview one or more of the applicant's governing board members, incorporators or organizers, and a representative sampling of staff who have been hired; and
8. Inspect the applicant's computer security system and review the applicant's confidentiality safeguards.

D. For an initial application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 75 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).

E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7406 repealed; new Section R6-5-7406 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7407. Licensing Study

A. The licensing representative shall summarize the results of the site visit, and other information gathered during the licensing process in a written licensing study, which shall be the basis for the licensing decision.

B. The licensing study shall describe whether the applicant has:
1. Complied with all application and inspection requirements; and
2. Demonstrated that it has:
a. The capital to pay all start-up costs and the financial ability to meet one year's operating expenses, as prescribed in R6-5-7405(A)(4);

b. The staff, expertise, facilities, and equipment to provide the services it plans to offer; and
c. The ability and intent to comply with the standards and requirements of this Article.

C. The applicant may obtain a copy of the licensing study, upon request.

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7407 repealed; new Section R6-5-7407 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7408. Licensing Decision: Issuance; Denial; Time-Frames

A. The Licensing Authority shall issue a written licensing decision within 30 days of concluding the applicant's final site visit. This 30 day period is the substantive review time-frame required by A.R.S. § 41-1072(3).

B. The licensing decision shall explain whether the Licensing Authority will grant or deny a license, and the terms of the license.
1. If the Licensing Authority grants a license, the Licensing Authority shall send the license and any operating certificates with the notification letter.
2. If the Licensing Authority issues a provisional license as prescribed in R6-5-7419 or denies a license, the Licensing Authority shall send the notice by certified mail. The notice shall contain the information listed in R6-5-7421(B) for a notice of adverse action.

C. The overall time-frame for an initial license is 105 days.

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7408 repealed; new Section R6-5-7408 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7409. Licenses and Operating Certificates: Form; Term; Nontransferability

A. If an agency's administrative office is located separately from an agency facility, the Licensing Authority shall issue a license to the agency and an operating certificate to each facility the agency operates. If the agency and facility occupy the same location, the Licensing Authority shall issue only a license, with the information required for an operating certificate.
1. A license shall:
   a. Identify the agency name, and the geographic area in which the agency is licensed to operate;
   b. List each facility the agency operates, and the total number of children the agency is authorized to serve; and
   c. Require the agency to operate each facility in accordance with the operating certificate issued to the particular facility.
2. An operating certificate shall:
   a. Identify the agency operating the facility;
   b. Identify the facility name, if different from the agency name, and the geographical area in which the facility is authorized to operate;
   c. List the type of service or program to be offered at the facility; and
   d. Specify the number, gender, and ages of children the facility may receive for care.

B. An operating certificate is not valid unless it has been issued in the name of an agency holding a license. Except as otherwise prescribed in subsection (A) for an agency and facility at the same location, a facility cannot operate without a current operating certificate.

C. A license and an operating certificate expire one year from the date of issuance, except as otherwise provided in R6-5-7410 for satellite facilities and in R6-5-7419 for provisional licenses.

D. An agency shall post its current license in the agency, in a conspicuous location, visible to the public. The agency shall post a facility's current operating certificate in a conspicuous location within the facility.

E. A license and an operating certificate cannot be transferred or assigned, and shall expire upon a change in ownership. For the purpose of this Section, a "change in ownership" includes any of the following events:
1. Sale or transfer of the agency or facility;
2. Bulk sale or transfer of the agency's or facility's assets or liabilities;
3. Placement of the agency or facility in the control of a court appointed receiver or trustee;
4. Bankruptcy of the agency or facility;
5. Change in the composition of the partners or joint venturers of an agency or facility organized as a partnership;
6. Sale or transfer of a controlling interest in the stock of a corporate agency or facility; or
7. Loss of an agency's or facility's nonprofit status.

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Amended effective May 25, 1979 (Supp. 79-3). Amended subsection (H) effective January 2, 1981 (Supp. 81-1). Former Section R6-5-7409 repealed; new Section R6-5-7409 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7410. Licensed Agency: Application for an Operating Certificate for an Additional Satellite Facility

A. A currently licensed agency that wishes to obtain an operating certificate for an additional satellite facility shall send the Licensing Authority a letter of intent. The letter of intent shall include the following information:
1. The applicant's name, address, and telephone and telefacsimile numbers;
2. The name of the applicant's chief executive officer or administrator;
3. The name, address, and telephone and telefacsimile numbers of the additional facility;
4. A request that the Licensing Authority schedule the additional facility for a DHS health and safety inspection;
5. The name of the person who will be in charge of the additional facility, with a description of that person's qualifications;
6. A description of program and services to be offered at the proposed facility, including any policy or procedures unique to the facility;
7. A statement as prescribed in R6-5-7403(A)(5) for the applicable school district; and
8. All of the information listed in R6-5-7405(A) that differs from the information already on file for the agency, including:
   a. Floor plan,
   b. Fire inspection,
   c. Zoning clearance letter,
   d. Certificate of insurance,
   e. Evidence of financial stability,
   f. List of paid staff with the information required by R6-5-7405(A)(3), and
   g. Facility staffing schedule.

B. Upon receipt of all information listed in subsection (A), and a report of the DHS health and safety inspection, the Licensing Authority shall schedule the facility for a site inspection, as provided in R6-5-7406.

C. The Licensing Authority shall prepare a licensing study and issue a licensing decision on the application for the additional operating certificate as prescribed in R6-5-7407 through R6-5-7408. In determining whether to grant an additional operating certificate to an agency operating under a provisional license, the Licensing Authority shall also consider:

1. The nature and extent of the problems giving rise to the deficiency that caused the agency to be placed on provisional license status; and
2. The agency's progress on its corrective action to resolve the problems.

D. An operating certificate for an additional satellite facility expires at the end of an agency's regular licensing year.

Historical Note

Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7410 repealed; new Section R6-5-7410 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7411. Application for Renewal of License and Operating Certificates

A. No earlier than 90 and no later than 60 days prior to the expiration date of a license, an agency may apply to the Licensing Authority for renewal of its license and any operating certificates. The Licensing Authority does not have a duty to notify the agency of license expiration. The agency shall contact the Licensing Authority to request a renewal application and to schedule a DHS health and safety inspection. The agency shall schedule its own fire inspection. Failure to timely apply or obtain inspections may result in suspension of the agency's license until the renewal process is completed.

B. An agency shall apply for renewal on a Department application form containing the information required in this Section.

C. An agency shall submit copies of the completed renewal application and supporting documents to the Licensing Authority. If the agency has not amended, changed or updated the information or documentation since the agency last applied for or renewed its license, the agency shall indicate "no change" on the documents submitted with the renewal application.

D. With a renewal application, the agency shall also submit the following documentation:

1. A current financial statement prepared by an independent certified public accountant who is not employed by the agency;
2. A certificate of current insurance coverage as prescribed in R6-5-7426;
3. A copy of the agency's current budget and the agency's audit report for its preceding fiscal year;
4. Identification of and the following background information on the agency, facility, and administrators:
   a. Name, address, and telephone and telefacsimile numbers for the agency and all facilities operated by the agency;
   b. Name, title, business address, and telephone and telefacsimile number of:
      i. The person who serves as the chief executive officer (CEO) as prescribed in R6-5-7432(A);
      ii. The person who serves as the program director as prescribed in R6-5-7432(B);
      iii. The person with delegated authority to act when the CEO is absent;
      iv. The person in charge of each separate facility as prescribed in R6-5-7432(C);
      v. Persons holding at least 10% ownership interest in the applicant; and
      vi. The agency and facility medical directors, if applicable;
   c. The educational qualifications and work history for each person listed in subsection (D)(4)(b), with that person's attached resume, employment application, or curriculum vitae;
   d. A list of the members of the agency's governing body described in R6-5-7424, including name, address, position in the agency, term of membership, and any relationship to the applicant;
   e. A list of licenses or certificates for provision of medical or social services currently or previously held by the applicant or persons listed in subsection (D)(4)(b), including those held in this state or another state or country; the list shall include the dates the person held the license or certificate;
   f. A written description of any proceedings for denial, suspension, or revocation of a license or certificate for provision of medical, psychological, behavioral health, or social services, pending or filed, or brought against the applicant or a person listed in subsection (D)(4)(b), including those held in this state or another state or country; and
   g. A written description of any litigation in which the applicant or a person listed in subsection (D)(4)(b) has been a party during the 10 years preceding the date of application, including, collection matters and bankruptcy proceedings.
5. An organizational chart for the agency and each separate facility, showing administrative structure and staffing, and lines of authority.
6. The following information on staff:
   a. A list of applicant's paid staff, including:
      i. Name;
      ii. Position or titles;
      iii. Degrees, certificates, or licenses held;
      iv. Business address;
      v. Date of hire;
      vi. Date of last physical; and
      vii. Date of submission for fingerprinting and background clearance;
   b. For any staff whose primary residence is the facility:
      i. The name and date of birth of any persons residing with a staff member;
      ii. Evidence that any adult residing with a staff member has submitted fingerprints and criminal background information as prescribed in R6-5-7431 and is free from communicable diseases posing a danger to children in care, as prescribed in R6-5-7431(H); and
      iii. Evidence that the staff member's children who reside at the facility have current immunizations.
7. Copies of any written complaints the agency has received about its performance at its facilities during the expiring license year and the agency's response to the complaints; and
8. A written description of any changes in program services or locations, or the children served by the agency.

E. For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) begins

when the applicant submits a renewal application form and the required documentation listed in this Section.

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7411 repealed; new Section R6-5-7411 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7412. Renewal of License and Operating Certificates: Site Inspection; Time-frames; Standard for Issuance

A. Upon receipt of a complete renewal application, the Licensing Authority shall schedule the renewal applicant for a DHS health and safety inspection.

B. Upon receipt of the DHS inspection report and a complete renewal application package, the Licensing Authority shall schedule the applicant for a site inspection of the agency and each agency facility.

C. At the renewal site inspection, the licensing representative shall investigate the agency and facilities as prescribed in R6-5-7406, and may also:
1. Interview staff,
2. Interview clients and references,
3. Observe staffings,
4. Review a random sample of client and staff files,
5. Conduct field visits to agency branch offices and facilities.

D. For a renewal application, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 45 days. Before expiration of the time-frame, the Licensing Authority shall send the applicant written notice of administrative completeness or deficiency as prescribed in A.R.S. § 41-1074(A).

E. If the applicant does not supply the missing information, as prescribed in the notice, within 60 days of the notice date, the Licensing Authority may close the file. An applicant whose file has been closed, who later wishes to become licensed, may reapply.

F. The Licensing Authority shall issue a licensing decision within 25 calendar days of concluding the applicant's final site visit. This 25-day period is the substantive review time-frame under A.R.S. § 41-1072(3). The overall time-frame for a issuance of a renewal license is 70 days.

G. The Licensing Authority may renew an agency's license and any operating certificate for its facility when the agency and facility:
1. Demonstrate compliance with the standards set forth in applicable statutes and this Article;
2. Have complied with applicable statutes and the requirements of this Article during the expiring period of licensure; and
3. Have corrected any problems that resulted in imposition of a provisional license.

H. The Licensing Authority shall issue a renewal licensing decision as prescribed in R6-5-7408(B).

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7412 repealed; new Section R6-5-7412 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7413. Notification to Licensing Authority of Changes Affecting License; Staff Changes

A. A licensee shall send the Licensing Authority written notification of any planned change in the licensee's name, ownership, agency location, facility location, governing board member, chief executive officer, or program director, at least one month before the change. If the change occurs without sufficient time for prior written notice, the licensee shall orally notify the Licensing Authority as soon as the change is known, and shall send the Licensing Authority written confirmation within 48 hours of giving oral notice.

B. If a licensee wishes to make a substantial change as described in subsection (C), the licensee shall:
1. Provide the Licensing Authority with prior written notice of the change at least one month before the effective date of the change; and
2. Apply for an amended license as prescribed in R6-5-7414.

C. As used in subsection (B), "substantial change" means any of the following:
1. An event that will cause the licensee to be out of compliance with:
   a. The terms stated on the face of the license or an operating certificate; or
   b. A standard prescribed in this Article;
2. A change in a building or a physical site at the agency or facility if that change will alter the level or nature of care provided to children; or
3. Substantive revision of the policies and procedures required by this Article.

D. Within five work days of a paid staff member's hiring or separation, the licensee shall complete and send the Licensing Authority a Department form LC-008, "Child Welfare Agency Employee Central Registry," with the following information on the paid staff member:
1. Name,
2. Date of birth,
3. Social security number,
4. Date fingerprinted and fingerprinting results,
5. Position held,
6. Date of and reason for separation from employment, and
7. Opportunity for rehire.

Historical Note
Adopted effective May 19, 1977 (Supp. 77-3). Former Section R6-5-7413 repealed; new Section R6-5-7413 filed with the Secretary of State's Office May 15, 1997; adopted effective July 1, 1997 (Supp. 97-2).

R6-5-7414. Amended License or Operating Certificate

A. The Licensing Authority may issue an amended license or operating certificate to reflect a change in an agency or facility name or the terms of a license or an operating certificate if the change does not cause the agency or facility to fall out of compliance with applicable statutes and this Article.

B. The Licensing Authority shall not issue a license for an agency or an operating certificate for a facility that has moved to a new location until the agency or facility has:
1. Provided the information listed in R6-5-7405(A)(8),
2. Passed a DHS health and safety inspection,
3. Passed a fire inspection,
4. Passed a Licensing Authority site inspection, and
5. Submitted any new staff and household members for fingerprinting and criminal background checks as prescribed in A.R.S. § 46-141 and R6-5-7431.

C. An amended license or operating certificate expires at the end of the agency or facility's regular licensing year.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7415. Alternative Method of Compliance

A. The Licensing Authority, with the approval of the Attorney General's Office, may permit a licensee to substitute an alternative method of compliance for a licensing requirement or objective prescribed in this Article and not otherwise required by law, if the following conditions are met:
1. The licensee seeking to achieve compliance through an alternative methodology proposes, to the satisfaction of the Licensing Authority, that the licensee can satisfy the objective of the requirement through the alternative methodology; and
2. Allowing the licensee to achieve compliance through an alternative method will not jeopardize the health, safety, or well-being of children who are or may be placed in the licensee's care.

B. Approval of an alternative methodology expires as prescribed in the written letter authorizing the alternative, or at the end of the licensing year, and must be annually renewed.

C. The Licensing Authority is not obligated to permit an alternative method of compliance or to renew approval of the alternative methodology.

D. The Licensing Authority shall document the alternative and the findings required by subsection (A) in the licensing file.

E. The Licensing Authority may revoke the licensee's permission to comply through an alternative method if the Licensing Authority finds that a condition listed in subsection (A)(1) or (2) is not met.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7416. Monitoring

A. The Licensing Authority shall monitor the ongoing operations of agencies and facilities.

B. Monitoring activities may include the following:
1. Announced and unannounced inspections of an agency or a facility, including both physical premises and internal operations, books, records, policies, procedures, logs, manuals, files, inspection reports, certificates, and any other document prescribed by this Article;
2. Interviews with clients, staff, or other persons with information about the agency; and
3. Observation of program activities.

C. A licensee shall cooperate with the Licensing Authority's monitoring functions. Cooperation includes:
1. Making the agency, facility, and program activities available to licensing representatives for inspection and observation;
2. Providing the Licensing Authority with information or documentation requested;
3. Making staff available for interview; and
4. Allowing children in care to be interviewed.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7417. Complaints; Investigations

A. If the Licensing Authority receives an oral complaint about a licensee, agency, or facility, the Licensing Authority shall ask the complaining party to submit the complaint in writing, but shall investigate complaints as prescribed in this Section even if the complaining party does not put the complaint in writing.

B. The Licensing Authority shall refer all complaints involving allegations of child maltreatment to CPS as required by A.R.S. § 13-3620 for investigation as prescribed in A.R.S. § 8-546.01(C).

C. The Licensing Authority shall investigate complaints about a licensee through one or more of the following methods:
1. Telephone contact with the licensee,
2. Interviews with the complaining party,
3. Interviews with the licensee's staff,
4. Interviews with the licensee's clients,
5. Interviews of witnesses to the matters at issue,
6. Inspections of records and documents related to the issues raised in the complaint,
7. Announced and unannounced inspections of the agency or a facility,
8. Evaluation of a law enforcement or CPS report for evidence of a licensing violation, and
9. Any other activity necessary to validate or refute the allegations.

D. A licensee shall cooperate in any Department investigation as prescribed in R6-5-7416(C).

E. Upon completion of an investigation as described in subsection (C), the Licensing Authority shall:
1. Find that the complaint is invalid, document the findings in the agency's licensing file, and close the investigation;
2. Find that the complaint is valid and take disciplinary action against the licensee as prescribed in R6-5-7419 and R6-5-7420, or require corrective action as prescribed in R6-5-7418; or
3. Find that the complaint cannot be validated or refuted based on the available evidence and document the finding in the licensing file.

F. The Licensing Authority shall provide the licensee with an oral report of any findings made under subsection (E) and, upon the licensee's request, a copy of the written findings placed in the licensee's file. At the time of giving the oral report, the licensing representative shall advise the licensee of the opportunity to obtain a copy of the written findings.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7418. Corrective Action

A. If a deficiency is correctable within a specified period of time and does not jeopardize the health or safety of a child, the Licensing Authority may place the agency on a corrective action plan to cure the deficiency in lieu of the disciplinary measures prescribed in R6-5-7419 and R6-5-7420.

B. In determining whether to require corrective action in lieu of other disciplinary action, the Licensing Authority shall consider the following criteria:
1. The nature of the deficiency;
2. Whether the deficiency can be corrected;
3. Whether the licensee and its affected staff understand the deficiency and show a willingness and ability to participate in corrective action;
4. The length of time required to implement corrective action;
5. Whether the same or similar deficiencies have occurred on prior occasions;
6. Whether the licensee has had prior corrective action plans, and, if so, the licensee's success in achieving the required goals of the plan;
7. The licensee's history in providing care; and

8. Other similar or comparable factors demonstrating the licensee's ability and willingness to follow through with a corrective action plan and avoid future deficiencies.

C. The agency shall prepare a corrective action plan for the review and approval of the Licensing Authority.
1. The plan shall explain:
   a. How the agency will remedy the non-compliance;
   b. The time periods for completing all corrective action; and
   c. The agency staff responsible for carrying out the corrective action plan.
2. The plan shall provide for the agency to send the Licensing Authority periodic reports on the agency's progress, and a final report when all corrective action is completed.
3. An authorized representative of the agency shall sign and date the corrective action plan.

D. In deciding whether to approve a plan, the Licensing Authority shall ensure that the plan:
1. Will correct the identified deficiency within a specified period of time;
2. Identifies persons responsible for executing the steps listed in the plan; and
3. Permits the Licensing Authority to monitor the Licensee's progress in completing the plan.

E. The Licensing Authority may conduct announced and unannounced inspections of the agency or facility to monitor implementation of a corrective action plan. The licensee shall cooperate in any monitoring inspection as prescribed in R6-5-7416(C).

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7419. Provisional License

A. If an agency or a facility is temporarily unable to conform to the standards prescribed in this Article, the Licensing Authority may issue a provisional license to the agency, or convert a regular license to provisional status, as prescribed in A.R.S. § 8-505(C). For the purpose of this Section, "temporarily unable" means a time period of six months or less.

B. The Licensing Authority may impose provisional license status on an agency operating multiple facilities even though less than all facilities are out of compliance.

C. The Licensing Authority may issue a provisional license only when:
1. The non-compliance is correctable; and
2. The non-compliance does not jeopardize the health, safety, or well-being of children in care.

D. If the Licensing Authority issues a provisional license, the agency shall cooperate with the Licensing Authority to develop a written corrective action plan that meets the requirements of R6-5-7418(C) and (D) and shall comply with the terms of the plan.

E. If an agency receives a provisional license at the time of annual renewal and the license is later converted to a regular license during the agency's licensing year, the regular license expires one year from the date the provisional license was issued.

F. If an agency receives a regular license at the time of annual renewal, and the license is converted to a provisional license during the agency's licensing year, the agency's license expires one year from the date the regular license was issued.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7420. Denial, Suspension, and Revocation of a License or Operating Certificate

A. The Licensing Authority may deny, suspend, or revoke a license or operating certificate when:
1. An applicant or licensee has violated or is not in compliance with licensing rules and standards, Arizona state or federal statutes, or city or county ordinances or codes;
2. An applicant or licensee refuses to cooperate with the Licensing Authority in providing information required by these rules or any information required to determine compliance with these rules;
3. An applicant or licensee misrepresents or fails to disclose information to the Department regarding qualifications, experience, or performance of duties;
4. A licensee fails to cooperate in developing a corrective action plan after a request by the Licensing Authority, or fails to comply with a corrective action plan; or
5. An applicant or licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children in care.

B. In determining whether to deny a license, to take disciplinary action against a licensee, or to renew a license, the Licensing Authority may consider the licensee's past history from other licensing periods, both in Arizona and in other jurisdictions, and shall consider a pattern of violations of applicable child welfare statutes or rules, as evidence that an applicant or licensee is unable or unwilling to meet the physical, emotional, social, educational, or psychological needs of children.

C. The Licensing Authority shall deny, suspend, or revoke a license when an individual applicant or licensee has been convicted of or is awaiting trial on the criminal offenses listed in A.R.S. § 46-141.

D. The Licensing Authority shall deny, suspend, or revoke a license when an agency or facility:
1. Retains staff who have been convicted of or are awaiting trial on the criminal offenses listed in A.R.S. § 46-141;
2. Allows an adult other than those described in subsection (D)(1), who has been convicted of or is awaiting trial on the offenses listed in A.R.S. § 46-141, to reside at a facility; or
3. Allows any staff or other adult at the facility, who has committed an offense listed in A.R.S. § 46-141(D), to have contact with children in care.

E. The Licensing Authority may deny, suspend, or revoke a license when an applicant or licensee, any staff member, or any other adult who resides at the facility, has been convicted of or found by a court to have committed, or is awaiting trial on any criminal offense, other than those listed in A.R.S. § 46-141. In determining whether a person's criminal history affects an applicant's or licensee's fitness to hold a license, the Licensing Authority shall consider all relevant factors, including the following:
1. The extent of the person's criminal record, if any;
2. The length of time which has elapsed since the offense was committed;
3. The nature of the offense and whether the offense was originally classified as a felony or a misdemeanor;
4. The circumstances surrounding the offense;
5. The degree to which the person participated in committing the offense;
6. The extent of the person's rehabilitation; and
7. The person's role within the agency or facility.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7421. Adverse Action; Procedures; Effective Date

A. When the Licensing Authority plans to take adverse action against a licensee, the Licensing Authority shall give the licensee written notice of the adverse action by certified mail.

B. The notice shall specify:
1. The action taken;
2. All reasons supporting the action;
3. The sections of law justifying the action;
4. The procedures by which an applicant or licensee may contest the action taken, and the time periods for doing so;
5. An explanation of the applicant or licensee's right to request an informal settlement conference as prescribed in A.R.S. § 41-1092.03(A); and
6. If the Licensing Authority summarily suspends a license as provided in A.R.S. § 41-1064(C), the required finding of emergency.

C. The following actions are not appealable adverse actions:
1. Imposition of a corrective action plan to bring the licensee into compliance with licensing requirements, absent any material change in licensing status;
2. Denial or revocation of permission for an alternate method of compliance or operation of a barracks facility as prescribed in R6-5-7461(B) and R6-5-7462(B); and
3. A staff member's failure to clear the criminal history check prescribed in R6-5-7431(B).

D. Except as otherwise provided in A.R.S. § 41-1064 for emergency suspensions, adverse action is effective:
1. If a licensee does not appeal the adverse action, 31 days after the postmark date of the notice prescribed in subsection (A); or
2. If the licensee appeals the adverse action, when there is a final administrative decision, as prescribed in A.R.S. § 41-1092.08(D), affirming the adverse action.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7422. Appeals

A. An applicant may appeal the denial of a license and a licensee may appeal adverse action under A.R.S. § 8-506.01 and A.R.S. Title 41, Chapter 6, Article 10.

B. The applicant or licensee shall file a notice of appeal with the Licensing Authority. The notice shall contain the information required by A.R.S. § 41-1092.03(B).

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7423. Statement of Purpose; Program Description and Evaluation; Compliance With Adopted Policies; Client Rights; Single Category of Care

A. A licensee shall have a written statement which describes its philosophy, purpose, and program for children in care, and the nature and extent of any family involvement in the program.

B. A licensee shall have a written description of all services each facility provides to children in care and their families and the methods of service delivery.

C. A licensee shall follow all plans, policies, and procedures the licensee adopts in accordance with this Article.

D. A licensee shall annually evaluate whether a facility is achieving the objectives described in R6-5-7405(A)(5)(c)(i). The licensee shall make a written report of the evaluation and provide a copy to the Licensing Authority at the time of license renewal.

E. A licensee shall have a statement of client rights.

F. A licensee shall not combine its child welfare program, as defined pursuant to subsection (A), with other forms of care or programming such as child care, nursing or convalescent care for adults, or adult developmental care unless the licensee:
1. Physically separates children in the child welfare program from persons in other programs, and
2. Prevents interaction between children in the child welfare program and persons in other programs.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7424. Governing Body

A. A licensee shall have a governing body to oversee the operations, policies, and practices of the agency and its facilities. The governing body shall be:
1. The board of directors for an agency that is a non-profit corporation, or
2. The board of directors or individual owner of an agency that is a for-profit organization.

B. The governing body shall:
1. Ensure that the licensee provides the services described in the licensee's statement of purpose;
2. Adopt an annual budget of anticipated income and expenditures necessary to provide the services described in the licensee's statement of purpose;
3. Approve the licensee's annual financial audit report;
4. Establish a policy and procedure for selection and retention of staff sufficient to operate the agency and its facilities in accordance with this Article;
5. Unless the licensee is a sole proprietorship, meet at least four times each year, and maintain records of attendance and minutes of the meetings;
6. Develop criteria and written procedures for selection of the governing body members, and the chief executive officer as required by R6-5-7432(A);
7. Employ a chief executive officer who meets the qualifications prescribed in R6-5-7432(A), to whom the governing body shall delegate responsibility for the daily administration and operation of the agency;
8. Regularly evaluate the chief executive officer's performance; and
9. Review and approve the agency's policies and procedures, and any amendments to them.

C. A licensee shall maintain a list of the governing body's members; the list shall include each member's the name, address, term of membership, and relationship to the licensee, if any.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7425. Business and Fiscal Management; Annual Audit

A. A licensee shall maintain complete and accurate accounts, books, and records as prescribed in this Article, and in accordance with generally accepted accounting practice.

B. A licensee shall operate on the annual budget approved by its governing board.

C. A licensee shall regularly record its financial transactions and maintain, for five years, its financial records including receipts, disbursements, assets, and liabilities.

D. A licensee shall have an annual, fiscal year-end, financial audit by an independent certified public accountant who shall con-

duct the audit in accordance with generally accepted auditing standards. The audit report shall include the following financial information:

1. Income statement,
2. Balance sheet,
3. Statement of cash flow,
4. A statement showing monies or other benefits the licensee has paid or transferred to any of the following:
   a. Business entities affiliated with the licensee,
   b. The licensee's directors or officers,
   c. The licensee's chief executive officer or program director,
   d. The family member of a person listed in subsections (D)(2)(e)(ii) or (iii), or
   e. Another agency.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7426. Insurance Coverage

A licensee shall have insurance coverage that provides protection against financial loss as prescribed in this Section.

1. The licensee shall carry liability insurance covering accidents, injuries, errors and omissions in the minimum amount of $100,000 per person, and $300,000 per accident or event.
2. The licensee shall ensure that any vehicle the licensee owns or uses to transport children in care has the following insurance coverage:
   a. Injury per person: $100,000,
   b. Injury per accident: $300,000, and
   c. Property damage: $25,000.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7427. Confidentiality

A. Except as otherwise allowed by law, a licensee's records concerning children in care and their families are confidential, and the licensee shall not disclose or knowingly permit the disclosure of confidential information.

B. A licensee shall have written policies and procedures for keeping records secure, in a manner that preserves confidentiality and prevents loss, tampering, or unauthorized use. The policies and procedures shall:

1. Be consistent with any laws applicable to the specific records at issue; and
2. Cover the following:
   a. The form in which children's records are maintained and stored;
   b. Identification of the staff who:
      i. Supervise the maintenance of records,
      ii. Have custody of records, and
      iii. Have access to records;
   c. The persons to whom records may be released and under what circumstances records may be released, including release of information to custodial and non-custodial parents and guardians;
   d. Photography, audio or audio-visual recording, and public identification of children; and
   e. Participation of children or use of children's records in data research.

C. Before using personally identifiable information for publicity, fundraising, or research, a licensee shall obtain:

1. A written consent to release, as prescribed in subsection (E), from the child who is the subject of the information, if developmentally appropriate; and
2. A written consent to release, as prescribed in subsection (E), from the child's placing agency or person; or
3. Written authorization from the court, if the child is a ward of the court.

D. A licensee may release personally identifiable information about a child or family to persons who require the information to treat or provide services to the child unless the release is prohibited by law.

E. A consent to release shall include the following information:

1. The name of the person or agency to whom the information is to be released;
2. A description of the information to be disclosed;
3. The reason for disclosure;
4. The expiration date of the consent, not to exceed six months from date of signature; and
5. The dated signature of the person authorizing the release.

F. Notwithstanding any other provision of this Article, in a medical emergency, the licensee shall promptly release information from a child's record to persons who require the information to treat the child.

G. A licensee may withhold information if, in the judgment of the professional person treating the child, or the agency's program director, the release of information would be contrary to the child's best interests, unless the release is:

1. Ordered by a court,
2. Mandated by federal or state law,
3. Required by the licensee's agreement with the placing agency or person, or
4. Required by the Department to assess the licensee's compliance with the law.

H. If a licensee withholds information pursuant to subsection (G), the licensee shall:

1. Document, in the child's record, the reason for withholding the information;
2. Advise the person who requested the information that the person may grieve the withholding pursuant to the licensee's internal grievance process adopted in accordance with R6-5-7429.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7428. Children's Records: Contents, Maintenance, Destruction

A. A licensee shall maintain a current, separate case record for each child in care. The record shall be readily accessible to persons providing services to the child and shall include at least the following information:

1. The name, gender, race, religion, birthdate, and birthplace of the child;
2. The name, address, telephone number, and marital status of the child's parents;
3. The date of admission and source of referral;
4. The name, address, telephone number, and relationship to the child of the person with whom the child was living prior to admission, if other than the child's parent;
5. All documents related to the child's referral and admission of the child to the facility;
6. Documentation of the current custody and legal guardianship of the child;
7. The child's court status, if applicable;
8. Consent forms signed by the placing agency or person at the time of placement, allowing the licensee to authorize

necessary medical care, medications, routine tests, and immunizations;
9. Service plans and all reviews, revisions, notes, and updates reflecting the child's and family's goals, and progress towards achievement of goals;
10. A plan for permanent placement of the child;
11. Education records and reports;
12. Vocational training and employment records, if applicable;
13. Treatment and clinical records and reports; and
14. The discharge summary required by R6-5-7442(B).

B. A licensee shall have the medical records required by R6-5-7455. While the child is in care, the licensee may keep the child's medical records in a location separate from the records described in this Section. If the licensee keeps medical records in a separate location, the child's main record shall identify the location of the medical record.

C. All record entries shall be made in permanent ink or electronically. The licensee shall require personnel to date and legibly sign entries in a child's records.

D. If a licensee maintains a child's records in more than one place, the licensee shall:
1. Identify, in one location that is readily accessible to inspection by the Licensing Authority, the location of all parts of the record; and
2. Consolidate all records and notes into one case file, at one location, within 15 days following either:
   a. A request for consolidation from the Licensing Authority; or
   b. The date of the child's discharge from the facility.

E. A licensee shall maintain a child's record for the longest of the following time periods:
1. At least five years after the child's last discharge from the licensee's care;
2. At least three years after the child's 18th birthday; or
3. Another time period specified by applicable law or contract.

F. A licensee shall dispose of expired records in a manner that maintains confidentiality.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7429. Grievances

A. A licensee shall have a written policy and written procedures governing the receipt, consideration, and resolution of grievances brought to the licensee by children in care and their parents, regarding the licensee's program and care of children. The procedures shall:
1. Be written in a clear and simple manner that is developmentally appropriate for children in care;
2. Prohibit reprisal or retaliation against an individual who brings a grievance for the act of bringing the grievance;
3. Describe a process for fair and expeditious resolution of a grievance; and
4. Provide a means to tell the grievant about the action taken in response to the grievance.

B. A licensee shall maintain written records of grievance decisions for at least 12 months after the resolution.

C. The licensee shall maintain a log of grievances filed against the licensee. The licensee may keep a centralized agency log, or can maintain a separate log for each facility. The log shall include the following information:
1. Name of grievant;
2. Date grievance filed;
3. Description of the substance of the grievance;
4. Summary of the grievance resolution;
5. A copy of the grievance decision required by subsection (B), or a description of where the Licensing Authority can find the decision.

D. Copies of the grievance decisions may serve as the grievance log if:
1. The copies are kept in one central location that is readily accessible to the Licensing Authority,
2. The grievance decisions contain all the information listed in subsection (C), and
3. The licensee retains the decisions for at least three years following the date of grievance resolution.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Numbering for subsections (C) and (D) amended to correct typographical errors (Supp. 00-3).

R6-5-7430. Staff Management and Staff Records

A. A licensee shall have written staff policies and procedures which shall describe:
1. How the licensee recruits, screens, hires, supervises, trains, retains, develops, evaluates, disciplines, and terminates staff;
2. How the licensee handles staff resignations;
3. A job title, description and minimum qualifications for each position within the agency and all facilities;
4. The duties assigned to each position;
5. How the licensee handles staff grievances;
6. An organizational chart for the agency and all facilities; and
7. A method to assure privacy of staff records.

B. The licensee shall give all staff a copy of the person's own job description and allow staff access to the licensee's staff policies and procedures.

C. A licensee shall maintain a personnel record for all paid staff. The record shall include the following information, if applicable:
1. Application for employment including previous employment history and educational background;
2. Reference letters and documentation of phone notes on references that are dated and signed;
3. Documentation of the highest level of education achieved; the documentation may include a copy of a diploma, equivalence certificate, or record of notes of calls to educational institutions;
4. Medical examination reports on paid staff as required by R6-5-7431(F);
5. Medical examination reports on any other adult residing at the facility showing that the adult is free from communicable diseases as required by R6-5-7431(H);
6. Medical and immunization records on children who reside at the facility but are not in care, as required by R6-5-7431(H);
7. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
8. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
9. Record of all orientation and training received during employment;
10. Documentation showing that the paid staff member has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the paid staff member and a witness;

11. Documentation showing that the paid staff member has a valid driver's license if the paid staff member transports children;
12. Reports of all performance evaluations;
13. Documentation of any personnel actions or investigations that result in a written report;
14. Dates the paid staff member started and separated from employment; and
15. Reason for separation from employment.

D. A licensee shall maintain a personnel record on unpaid staff. The record shall include the following information, if applicable:
1. Application for work or study, including previous employment history and educational background;
2. Reference letters and documentation of phone notes on references that are dated and signed;
3. Medical examination reports, as required by R6-5-7431(F);
4. Copies of applicable professional licenses, credentials, and certifications, as required by R6-5-7431(A);
5. Documentation of fingerprinting and criminal records clearance as required by A.R.S. § 46-141 and R6-5-7431(B);
6. Record of all orientation and training received while affiliated with the licensee;
7. Documentation showing that the person has read and agrees to abide by the facility's behavior management policies and procedures which shall include the dated signature of the person and a witness;
8. Documentation showing that the person has a valid driver's license if the person transports children;
9. Reports of all performance evaluations;
10. Documentation of any personnel actions or investigations that result in a written report;
11. Dates the person began and ended affiliation with the licensee; and
12. Reason for ending affiliation with the licensee.

E. The licensee shall keep personnel records for at least three years after the staff member's separation from the licensee.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7431. General Qualifications for Staff

A. A licensee shall ensure that all staff providing services to children and their families under the licensee's program are currently certified, registered, or licensed as required by state law.

B. As prescribed in A.R.S. § 46-141, all staff having direct contact with children, and any persons age 18 or older who live at a facility, excluding children in care, shall be fingerprinted and shall certify on notarized forms provided by the Department whether they:
1. Are awaiting trial on or have ever been convicted of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
   a. Sexual abuse of a minor;
   b. Incest;
   c. First or second degree murder;
   d. Kidnapping;
   e. Arson;
   f. Sexual assault;
   g. Sexual exploitation of a minor;
   h. Contributing to the delinquency of a minor;
   i. Commercial sexual exploitation of a minor;
   j. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs;
   k. Burglary;
   l. Robbery;
   m. A dangerous crime against children as defined in A.R.S. § 13-604.01;
   n. Child abuse;
   o. Sexual conduct with a minor;
   p. Molestation of a child;
   q. Manslaughter;
   r. Aggravated assault; and
2. Have ever committed any of the acts listed in subsections (B)(1)(a), (g), (i), (m), (n), (o), and (p).

C. A licensee shall not knowingly employ, retain, or allow to reside at a facility, any staff, or person age 18 or above, who is awaiting trial on or has been convicted of any of the criminal offenses listed in subsection (B), or the same or similar offenses in another state or jurisdiction. A licensee shall not knowingly allow a person who has committed any of the offenses listed in subsection (B)(2) to have contact with children in care.

D. For all staff, a licensee shall:
1. Verify at least two years immediate, or most recent, past employment through reference checks;
2. Obtain at least three references from persons not related to the staff member by blood or marriage, who can attest to the staff member's character, knowledge, and skill.

E. The licensee shall document verification of the reference information required in subsection (D).

F. A licensee shall have staff providing direct care to children obtain a physical examination by a licensed medical practitioner before beginning assigned duties and at least every two years while working.

G. All staff shall be free from any communicable disease that poses a danger to children in care and shall have the capacity to perform the essential functions of that person's job.

H. Other adults who reside at the facility shall be free from communicable disease that poses a danger to children in care. Children who reside at the facility but are not in care shall have current immunizations and be free from communicable disease that poses a danger to children in care.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7432. Qualifications for Specific Positions or Tasks; Exclusions

A. Chief Executive Officer "CEO": A licensee shall have a chief executive officer for the agency. The CEO:
1. Is responsible for general management, administration, and operation of the agency in accordance with this Article;
2. Ensures that:
   a. Each child in care receives necessary professional services;
   b. Appropriately qualified staff render services to children in care; and
   c. The services are coordinated;
3. Shall have management experience and meet any other qualifications prescribed by the Governing Body;
4. Shall reside in Arizona;
5. Shall be accessible to staff, representatives of the Licensing Authority, and other governmental agencies; as used in this subsection, "accessible" means readily available to answer questions and to handle problems or emergencies that arise, either personally or through a chain of command; and

6. Shall designate a qualified person to perform administrative responsibilities whenever the CEO is inaccessible.

B. Program Director: A licensee shall have at least one person who is responsible for development, implementation, and supervision of an agency's programs and services. This person shall have at least:
1. A master's degree in social work or a related area of study from an accredited school and at least one year experience in the child welfare or child care services field; or
2. A bachelor's degree in social work or a related area of study from an accredited school and two years of experience in the child welfare or child care services field.

C. Facility Supervisor: If a licensee operates more than one facility, the licensee shall designate a person to supervise the operations of each facility.

D. Supervisors: Any staff member who supervises, evaluates, or monitors the work of the direct care staff shall have at least six months paid child care experience and at least 3 1/2 years of any combination of the following:
1. Paid child care or related experience; or
2. Post-high school education in social work or a related field.

E. Direct Care Staff: A person who supervises, nurtures, or cares for a child in care shall have at least:
1. A high school diploma or equivalency degree and one year experience in working with children; or
2. One year post-high school education in a program leading to a degree in the field of child welfare or human services.

F. Program Instructors: A person who supervises, trains, or teaches children in the performance of a physical activity that poses an unusually high risk of harm, such as archery, river rafting, rock climbing, caving, rappelling, and hang gliding, shall:
1. Be currently certified to perform the activity, if applicable;
2. Have at least three years of experience related to the activity; or
3. Have at least three letters of reference attesting to skill and experience in the activity.

G. CPR and First Aid Certification: A licensee shall ensure that:
1. Direct care staff are certified in pediatric cardiopulmonary resuscitation (CPR) and in first aid by the American Red Cross, the American Heart Association, or the Arizona Chapter of the National Safety Council within three months of being hired and before caring alone for children in care.
2. At least one staff member per shift, per facility is currently certified in CPR and first aid.

H. Multiple Functions: A licensee may allow one person to perform multiple functions or fill more than one position so long as:
1. The person performing multiple functions is qualified for the jobs held; and
2. The licensee does not violate the requirements of this Article, including R6-5-7437 governing staff-child ratios.

I. Exclusions: The educational requirements set forth in this Section do not apply to persons employed with a licensee on the effective date of this Article. These requirements do apply to:
1. Persons hired as employees after the effective date of this Article; and
2. Persons who:
   a. Are employed with a licensee on the effective date of this Article;
   b. Subsequently separate from that employment; and
   c. Later seek employment with the same or a different licensee.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7433. Orientation and Training for Staff

A. A licensee shall have a written plan for orientation and training of all staff. The plan shall include a method for the licensee to evaluate whether the person has actually learned the information that was the subject of orientation or training.

B. All staff shall receive initial orientation and training before assignment to solo supervision of children. The initial orientation and training shall include:
1. Acquainting staff with the licensee's philosophy, organization, program, practices, and goals;
2. Familiarizing staff with the licensee's policies and procedures, including those on confidentiality, client and family rights, grievances, emergencies and evacuations, behavior management, preventing and reporting child maltreatment, recordkeeping, medications, infection control, and treatment philosophy;
3. Training staff in cardiopulmonary resuscitation (CPR) and first aid according to American Red Cross guidelines as prescribed in R6-5-7432(G);
4. Training staff to do the initial health screening prescribed in R6-5-7438(E)(9); the licensee shall have a licensed medical practitioner provide this training;
5. Training staff in de-escalation and any physical restraint practices used at the facility by an instructor qualified under this subsection. An instructor is qualified to train staff in de-escalation and physical restraint practices if:
   a. The instructor has a written curriculum that conforms to the requirements of this Article and state law.
   b. The classroom instruction provided conforms to the requirements of this Article and state law.
6. Familiarizing staff with the specific child care responsibilities outlined in the person's job description;
7. Training staff to recognize expected responses to and side effects of medications commonly prescribed for children in care; and
8. Training staff in the licensee's emergency admissions process if applicable to the licensee's services.

C. The licensee's training plan for ongoing training shall satisfy the requirements of this subsection.
1. A full-time support staff member shall receive at least four hours of annual training.
2. A full-time direct care staff member shall receive at least 24 hours of annual training.
3. The training shall cover matters related to the person's job responsibilities, and at least the following subjects, as appropriate to the characteristics of the children in care at the facility:
   a. Child management techniques;
   b. Discipline, crisis intervention, and behavior management techniques;
   c. A review of the licensee's policies;
   d. Health care issues and procedures;
   e. Maintenance of current certification in CPR and first aid;
   f. Attachment and separation issues for children and families;

g. Sensitivity towards and skills related to cultural and ethnic differences;
h. Self-awareness, values, and professional ethics; and
i. Children's need for permanency and how the agency works to fulfill this need.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7434. Notification of Unusual Incidents and Other Occurrences

A. A licensee shall make a record of any unusual incident on an incident reporting form which shall include the following information:
1. Location of the unusual incident;
2. Name and address of any child involved in or observing the incident;
3. Name of the agency if different from the facility;
4. Name, title, and address of any staff involved in or observing the incident;
5. Name and address of any other person involved in or observing the incident;
6. Date of the incident;
7. Time of the incident;
8. Description of the incident; and
9. Licensee's response to the incident.

B. The licensee shall maintain a record of all unusual incidents occurring at the facility in a separate log or place, which shall permit the Licensing Authority to easily locate the incident reporting form if the licensee maintains the form in a location separate from the log.

C. When a child in care dies, the licensee shall notify the child's placing agency or person, and the Licensing Authority within two hours of knowledge of the death.

D. When a child in care suffers a serious illness, serious injury, or a severe psychiatric episode requiring hospitalization, the licensee shall notify the child's placing agency or person within 24 hours of knowledge of the occurrence.

E. A licensee shall comply with the statutory obligation to report child maltreatment, as prescribed in A.R.S. § 13-3620.

F. A licensee shall comply with any reporting requirements set forth in the licensee's contracts with placing agencies or persons.

G. No later than 5:00 p.m. on the next business day, the licensee shall notify the Licensing Authority when any of the following occurs:
1. Fire or a natural disaster affecting the licensee;
2. Law enforcement involvement in which a formal complaint is filed by or against the licensee, but excluding incidents of children cited solely for absence without leave from the facility;
3. Any incident of alleged child maltreatment of a child in care;
4. When a child in care or any other person suffers any injury from use of restrictive behavior management, and which requires treatment by a licensed medical practitioner;
5. When a child in care suffers any physical injury from an incident involving another child in care and requires treatment by a licensed medical practitioner;
6. When a child in care suffers an injury or psychiatric episode that is severe enough to require hospitalization or external medical intervention for the child; and
7. When a child in care requires external emergency services including a suicide watch.

H. Within five calendar days, a licensee shall give the Licensing Authority written documentation of an event listed in subsection (G) above. The documentation shall contain at least the information required by subsection (A), and may be a copy of the licensee's unusual incident reporting form.

I. If a child in care dies, a licensee shall notify the local law enforcement authority and cooperate in any arrangements for examination, autopsy, and burial.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7435. Investigations of Child Maltreatment

A. A licensee shall have written procedures for handling alleged and suspected incidents of child maltreatment, including at least the following provisions:
1. Reporting suspected incidents of maltreatment to law enforcement or Child Protective Services as required by A.R.S. § 13-3620;
2. Notifying the Licensing Authority, and notifying the child's placing agency or person if so requested;
3. Taking precautions to prevent further risk to the child who allegedly suffered the maltreatment and potential risk to other children in care;
4. Evaluating the retention of any staff who commit or allow child maltreatment; and
5. If the licensee internally investigates incidents, conducting the internal investigation.

B. A licensee shall require all staff to read and sign a statement describing the duty to report child maltreatment as prescribed in A.R.S. § 13-3620.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7436. Runaways and Missing Children

A licensee shall have a written policy and procedures for handling runaways and missing children. The policy shall include at least the following:
1. Procedures for making staff who provide services to a child with a history of or potential for running away, aware of that child's history or potential;
2. Procedures for immediately notifying the designated administrator of the child's facility or that person's designee when a child is discovered to be missing;
3. Procedures for notifying the local law enforcement agency, the child's placing agency or person, and others as necessary;
4. Procedures to prevent runaways; and
5. Procedures for submitting a written report to the child's placing agency or person within five days or the time specified in the placement agreement.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7437. Staff Coverage; Staff-child Ratios

A. A licensee shall have a written plan to minimize the risk of harm to children. The written plan shall describe the staffing for each facility, for 24 hours per day, seven days per week. The staffing plan shall explain:
1. How staff coverage is assured:
   a. When assigned staff are absent due to illness, vacation, or other leaves of absence; and

b. During emergencies when only one staff member is on duty; and
2. The methods the licensee uses to assure adequate communication and support among staff to provide continuity of services to children.

B. A licensee shall also have a written staffing schedule for each facility shift; the schedule shall document the staff actually on duty during each shift. The licensee shall retain the schedules in one designated location for at least two years.

C. A licensee shall have at least the paid staff to child ratios prescribed in this subsection.
1. Age 12 and above:
a. At least one paid staff member for each 10 children when children are under the licensee's direct supervision and awake.
b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
2. Age 6 through 11:
a. At least one paid staff member for each eight children when children are under the licensee's direct supervision and awake.
b. During sleep hours, at least one paid staff member in each building where children in care are sleeping.
3. Age 3 through 5:
a. At least one paid staff member for each six children when children are under the licensee's direct supervision and awake.
b. At least one paid staff member in each building where children in care are sleeping.
4. Under age 3:
a. At least one paid staff member for each five children when children are under the licensee's direct supervision and awake.
b. At least one paid staff member for each six children when children are sleeping.
5. Nonambulatory children, under age 6: At least one paid staff member for each four children at all times.
6. Young adults:
a. At least one paid staff member onsite for each 10 young adults when young adults are under the licensee's direct supervision and awake.
b. During sleep hours, at least one paid staff member onsite for each 20 young adults.

D. For the purpose of the paid staff-child ratios in subsection (C):
1. Students and volunteers do not count as staff;
2. A child who lives at the facility is counted as a child, unless the child is not in the care, custody, and control of the state of Arizona, and the child's parent is:
a. In care, residing in the same facility; and
b. Determined to be the child's primary caregiver by;
i. The placing agency;
ii. A court; or
iii. The licensee, when subsections (i) and (ii) do not apply;
3. When a child resides with a parent in a facility licensed under this Article, the licensee shall provide, at the Department's request, documentation of:
a. The custodial relationship between parent and child; and
b. If applicable, the determination that the parent is an acceptable primary caregiver for the child.
4. Any paid staff member counted in the ratio shall be someone who is qualified to provide direct child care as prescribed in R6-5-7432(E).

E. A licensee shall not fall below the minimum paid staff-child ratios specified in subsection (C), and shall, notwithstanding those ratios, have paid staff:
1. Sufficient to care for children as prescribed in this Article and in the licensee's own program description, statement of purpose, and policies;
2. That take into account the following factors:
a. The ages, capabilities, developmental levels, and service plans of the children in care;
b. The time of day and the size and nature of the facility; and
c. The facility's history and the frequency and severity of unusual incidents, including runaways, sexual acting-out behavior, disciplinary problems, and injuries.

F. A licensee shall have sufficient numbers of qualified staff to perform the fiscal, clerical, food service, housekeeping, and maintenance functions prescribed in this Article and in the licensee's own policies.

G. A licensee shall make a good faith effort to employ staff who reflect the cultural and ethnic characteristics of the children in care.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7438. Admission and Intake; Criteria; Process; Restrictions

A. Admissions: A licensee shall have a written admissions policy, which shall:
1. Describe the licensee's admission criteria, including:
a. Population to be served, including age range, gender, physical development, social behavior, and custody and guardianship status;
b. Geographic area of service;
c. The needs, problems, and child-related issues best served at the licensee's facility; and
d. The method used to assign a child to a particular living unit;
2. Contain an acknowledgment that the licensee abides by the Interstate Compact on the Placement of Children, the Indian Child Welfare Act, and the Interstate Compact on Juveniles; and
3. Provide that the licensee shall not refuse admission to any child on the grounds of race, religion, or ethnic origin.

B. Age Limit; Continuing Care for Persons in High School: A licensee shall not admit a person who is age 18 or older, except a licensee may continue to care for an individual under age 22 who was a child in care and turned age 18 while in care, as long as the individual is currently enrolled in and regularly attending a high school program or vocational training program. A licensee shall not allow an individual to remain in care after the individual receives a high school degree or certificate of equivalency, or completes the vocational training program.

C. Admissions Outside of Criteria: A licensee shall not accept a child who is not within the licensee's admission criteria unless:

1. The placing agency or person specifically authorizes the admission after reviewing the agency's program description;
2. The admission is consistent with the terms of the agency's license and will not result in a violation of this Article; and
3. The child's individual service plan explains:
   a. The reasons for acceptance, and
   b. How the facility will meet the child's needs.

D. Intake Assessment:
1. A licensee shall not accept a child into care unless:
   a. The child has a current intake assessment covering the child's social, health, educational, legal, family, behavioral, psychological, and developmental history; or
   b. The licensee completes such an assessment within seven days following the child's admission.
2. In this subsection, "current" means within the six months prior to admission.

E. Admission and Intake Process and Requirements: The licensee shall have a written policy and procedures describing the process and requirements for both regular and emergency admissions and intake. The policy shall include the provisions listed in this subsection.
1. The licensee shall have a method to allow a child to participate in admission and intake decisions, including selection of a living unit, if developmentally appropriate and consistent with the licensee's program.
2. The licensee shall provide the placing agency or person with a reasonable opportunity to participate in admission and intake decisions.
3. Except for emergency admissions as prescribed in subsection (F), the licensee shall not admit a child unless the licensee has, at the time of or prior to admission:
   a. A written agreement with the child's placing agency;
   b. A court order; or
   c. The written consent of the child's custodial parent or guardian.
4. The licensee shall obtain any available medical information about the child before or at the time of the child's admission. The information may include:
   a. A report of a medical examination of the child performed within 45 days prior to admission;
   b. A report of a dental examination of the child performed within six months prior to admission; and
   c. The child's and family's medical history.
5. If the information described in subsection (D)(4) is not available, the licensee shall comply with the requirements of R6-5-7452 to obtain an examination.
6. At the time of or prior to admission, the licensee shall obtain written consent from the child's placing agency or person for the licensee to authorize routine medical and dental procedures for the child.
7. If a child is taking medication at the time of admission, the licensee shall:
   a. If the medication is in its original container, labeled by the dispensing pharmacist with a fill date, prescribing physician, and instructions for administration, document the receipt of the medication as prescribed in subsection (E)(7)(c); or
   b. If the medication is not in its original container, or if the container is not labeled as described in subsection (E)(7)(a), contact the prescribing physician to verify the medication administration schedule and reason for the medication; and
   c. Document the contact in the child's medical record required by R6-5-7455 and the medication administration schedule as prescribed in R6-5-7453(B).
8. A licensee shall not refill a prescription that a child brings at admission without having a licensed medical practitioner determine the child's need for the medication and documenting the need as prescribed in subsection (E)(7)(c).
9. Within 24 hours of a child's admission, a direct care staff member who has the training prescribed in R6-5-7433(B)(4), or a licensed medical practitioner, shall assess the child's general health, by:
   a. Looking at the child for signs of obvious physical injury and symptoms of disease or illness;
   b. Assessing the child for evidence of apparent vision and hearing problems; and
   c. Documenting any conditions or problems and referring the child for immediate or further assessment or treatment, if indicated.

F. Emergency Admissions: In an emergency situation requiring immediate placement, a licensee shall:
1. Gather as much information as possible about the child and the circumstances requiring placement;
2. Record this information in the child's record, within two days of admission, as an emergency admission notation; and
3. Keep an emergency admission record, which shall include at least the following information about the child:
   a. Physical health,
   b. Family history,
   c. Educational background,
   d. Legal status, and
   e. A statement explaining the need for care.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7439. Information and Services Provided to the Placing Agency or Person

A. No later than the date of a child's admission, a licensee shall provide information about the following subjects to the placing agency or person.
1. The licensee's statement of purpose and program description prescribed in R6-5-7423(A) and (B);
2. Daily routines at the facility where the child is or will be placed;
3. The behavior management policies and procedures prescribed in R6-5-7456;
4. Services and treatment strategies provided or used at the facility;
5. The visitation and communications policy prescribed by R6-5-7448;
6. The education program or method for providing a child with education;
7. Any religious practices observed by the licensee or religious observances required of children.

B. The licensee may provide the information in summary form or orally, but shall:
1. Convey the information in a language or form that the placing agency or person can understand;
2. Advise the placing agency or person that the licensee will provide a copy of the licensee's policies or procedures, upon request.
3. Provide the name and telephone number of a staff person that the placing agency or person may contact to obtain information about the program, facility, or child.

C. The licensee shall provide the placing agency or person with a copy of the licensee's grievance procedures required by R6-5-7429 and the statement of client rights required by R6-5-7423(C).
D. The licensee shall obtain the dated signature of the placing agency or person indicating receipt of the information listed in subsections (A) through (C).
E. Before obtaining the signature of a child's parent or guardian on a contract, consent, or release, the licensee shall explain the contents of the documents.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7440. Orientation Process for a Child In Care
A. A licensee shall provide a child admitted into care with the orientation described in this Section in a language and manner that the child can understand and to the extent developmentally appropriate to the child.
B. During the first full day of a child's placement, a licensee shall:
1. Explain the facility's emergency procedures,
2. Show the child where emergency exits are located,
3. Take the child on a tour of the facility, and
4. Introduce the child to staff and other residents.

C. During the first week following a child's admission and as part of each child's orientation, a licensee shall:
1. Familiarize the child with the licensee's program;
2. Explain the licensee's expectations and requirements for behavior;
3. Explain the criteria for successful participation in and completion of or emancipation from the program;
4. Make available a copy of the behavioral rules prescribed by R6-5-7456(A)(3)(a), (b), (c), (d), and (h);
5. Make available a copy of the visitation and communication policy prescribed by R6-5-7448; and
6. Describe and, upon request, make available a copy of the grievance procedures prescribed by R6-5-7429 and the statement of client rights prescribed by R6-5-7423(E).

D. The licensee shall document the orientation and other information given to a child in the child's case record.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7441. Child's Service Plan: Preparation; Review; Planning Participants
A. Service Plan Contents: A child in care shall have a personalized service plan tailored to the child's unique background, needs, strengths, weaknesses, and problems. The plan shall include at least the following information:
1. A description of services the child is to receive while in care, including services to ready the child for discharge or emancipation from the program;
2. Goals and objectives for the child;
3. Timelines for achieving each goal and objective;
4. Recommendations for any after-care;
5. Identification of persons invited to participate in service planning;
6. The names and, if available, signatures of the persons who participated in service planning;
7. Identification of persons responsible for implementing the service plan, with an explanation of each person's role; and

B. Timing for Plan Development and Review:
1. If a child has an existing service plan at the time of admission, the licensee shall:
   a. Review the plan before or at the time of the child's admission, and
   b. Assess the existing plan and make any necessary changes to conform to the requirements of this Section.
2. If a child does not have a service plan at the time of admission, the licensee shall initiate service planning at the time of admission.
3. Within seven days of a child's admission, a licensee shall document all interim planning efforts identifying the child's needs and initial plans for service.
4. No later than 30 days after the child's admission to a facility, the licensee shall complete the child's initial service plan and any initial modifications to an existing plan.

C. Plan Review: The licensee shall review and update a child's service plan at least every 90 days following completion of the child's service plan described in subsection (B)(4).
D. Planning Participants:
1. The licensee shall invite, or delegate the responsibility for inviting, at least the following persons to participate in development of the service plan and periodic review:
   a. A representative of the facility;
   b. A representative of the placing agency, if applicable;
   c. The child, if the child's presence is developmentally appropriate; and
   d. The child's parent or guardian.
2. At least one participant on the service team shall have the qualifications listed in R6-5-7432(B)(1) or (2).

E. Methods of Participation: The licensee shall allow service team members to participate in service planning through the following methods:
1. Attendance at a planning meeting,
2. Submission of a written report or documentation,
3. Review and approval of the plan through signing and dating, or
4. Audio or audio-visual teleconference.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7442. Discharge; Discharge Summary
A. Policy and Procedure: A licensee shall have written policy and procedures for planned and unplanned discharges of children.
1. Before a child's planned discharge, the licensee shall explain the discharge plan to the child and help the child understand the plan.
2. The licensee shall also explain the discharge plan to the person removing the child.
3. Before discharging a child to another out-of-home placement, the licensee shall make a reasonable effort to:
   a. Arrange for the service team to meet or communicate with a representative from the new placement to share information about the child; and
   b. Arrange for the child to visit the new placement.

B. Discharge Summary: Within 15 days of the date a child is discharged, the licensee shall complete a written discharge summary which shall include the following information:
1. The name, address, telephone number, and relationship of the person to whom the child was discharged;
2. The planned and actual discharge dates;
3. A summary of the contacts between the licensee and the facility or person to whom the child was discharged about the child's pending discharge;
4. A summary of services provided during care;

5. A list of medication provided during care, with a summary of the reasons for prescribing the medication and any outcomes of the medication;
6. A summary of progress toward service plan goals;
7. An assessment of the child's unmet needs and alternative services which might meet those needs;
8. Any after-care plan and identification of any person or agency responsible for follow-up services and after-care; and
9. For an unplanned discharge, a description of the circumstances surrounding the unplanned discharge, including the licensee's actions.

C. Notice of Unplanned Discharge: When a child's placing agency or person has not participated in the decision to discharge the child, the licensee shall notify the placing agency or person within one hour of discharge, or document attempts at notification.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7443. Personal Care of Children

A. A licensee shall provide children in care with:
1. Developmentally appropriate supervision, assistance, and instruction in, good habits of personal care and hygiene and culturally appropriate grooming;
2. Necessary toiletry items; and
3. The opportunity to have a daily shower or tub bath in private, as developmentally appropriate, or as otherwise prescribed in program policy.

B. A licensee shall not allow community use of grooming and hygiene articles such as towels, toothbrushes, soap, hairbrushes, and deodorants.

C. If a licensee restricts personal care or grooming practices, the licensee shall have a policy describing the restrictions and the reasons for the restrictions.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7444. Children's Clothing and Personal Belongings

A. A child may bring clothing and personal belongings to the facility and acquire belongings while in care, in accordance with the child's service plan and the facility's policy.

B. If a licensee limits a child's right to have, wear, or display certain clothes or personal belongings, the licensee shall:
1. Have a written policy explaining the limitations and the reasons for the limitations; and
2. Explain the limitations to the child in a form and manner that the child can understand.

C. When a child is admitted, the licensee shall inventory the child's clothing and personal belongings; the licensee shall provide a copy of the inventory to the placing agency or person and keep a copy in the child's file.

D. The licensee shall either store any restricted possessions or return the possessions to the child's placing agency or person.

E. The licensee shall ensure that each child has a personal supply of clean and seasonable clothing as required for health, comfort, and physical well-being and as appropriate to the child's age, gender, size, and individual needs.

F. The licensee shall allow a child to help select his or her own clothing when developmentally appropriate and allowed by programmatic requirements.

G. The licensee shall have a policy governing retention, return, and disposal of the clothes and personal belongings of a child who has had an unplanned discharge. At the time of a child's planned discharge, the licensee shall allow the child to take clothing and personal belongings.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7445. Children's Money; Restitution

The licensee shall provide opportunities for children to develop a sense of the value of money through allowances, earnings, spending, giving, and saving. Any practices regarding children's money shall comply with this Section.
1. The licensee shall have a written policy regarding allowances.
2. The licensee shall treat a child's money as that child's personal property.
3. The licensee may limit the amount of money to which a child may have access when the limitations are:
   a. In the child's best interest and explained in the child's service plan; or
   b. In accordance with the facility's program description.
4. The licensee shall not deduct sums from a child's allowance as restitution for damages caused by the child unless:
   a. The licensee has discussed restitution with the child; and
   b. The deduction is:
      i. Reasonable in amount,
      ii. Consistent with the child's ability to pay,
      iii. In accordance with the licensee's policy, and
      iv. Explained in the child's service plan.
5. The licensee shall maintain individual accounting records for the money of each child.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7446. Nutrition, Menus, and Food Service

A. A licensee shall have a written, dated menu of planned meals. The menu shall be available at the facility at least one week before meals are served. The licensee shall post the weekly menu in the dining area or in a location where children may review it. The licensee shall keep a copy of the menu and any menu substitutions on file for one year.

B. The licensee shall prepare and serve meals in compliance with the written, dated menus.

C. A registered nutritionist or dietitian shall either prepare or approve the licensee's menus. The licensee shall maintain a record of any approvals for one year, and keep the record in a central location at the agency or facility.

D. A licensee shall develop and follow a specialized menu for a child with special nutritional needs. The licensee shall make special menus available to nutritional staff, but shall not post special menus in an area that is readily seen by other children in care.

E. Menus shall reflect the religious, ethnic, and cultural differences of children in care.

F. When developmentally appropriate, a licensee shall allow children to make menu suggestions.

G. A licensee shall provide each child with at least three meals daily, with no more than 14 hours between the evening and morning meals. Between meal snacks shall not replace regular meals.

H. A licensee shall provide meal portions that are consistent with each child's caloric needs.

I. A licensee shall serve children meals that are substantially the same as those served to staff unless special dietary needs require differences in diet.
J. A licensee shall allow children to eat at a reasonable rate; unless otherwise prescribed in agency policy, staff shall encourage social interaction and conversation during meals.
K. A licensee shall have potable water available at all times.
L. Staff shall directly supervise children involved in food preparation.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7447. Sleeping Arrangements
A licensee shall comply with the sleeping arrangement provisions in this Section.
1. A child age 6 or older shall not share a bedroom with a child of the opposite gender.
2. A child shall not share a bedroom with an adult unless one of the conditions listed in this subsection is met.
   a. The child is younger than age 3.
   b. The child's service plan contains specific reasons and authorization from the placing agency or person for a shared bedroom.
   c. The child has a temporary need for special adult care during sleeping hours and the need is documented in the child's service plan.
   d. The child has regularly shared a bedroom with another child in the licensee's care; the other child has reached age 18; and the placing agency and licensee agree that continuing the shared arrangement is in the best interests of both the child and the adult.
   e. The child is sharing a room with his or her parent.
   f. The sleeping area at the facility is a barracks that has been approved as described in R6-5-7461(B) and R6-5-7462(B), and a paid staff member sleeps in the same room to supervise the children in care.
3. Only children age 8 or older may sleep on the upper bed of a bunk bed.
4. If a child has a documented record of behavior that poses a risk to other children in care, the licensee, in consultation with the placing agency or person, shall develop special sleeping arrangements for that child, to minimize the risk of harm to other children. The licensee shall document the arrangements in the child's service plan.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7448. Visitation, Outings, Mail, and Telephones
A. The licensee shall have a written policy and procedures regarding visitation, mail, telephone calls, and other forms of communication between children and family, friends, and other persons. The policy and procedures shall conform to the requirements of this Section.
1. The licensee shall allow a child reasonable privacy during a visit unless the child's service plan requires supervised visitation.
2. A licensee shall have facility visiting hours which meet the needs of the children and their parents.
3. A licensee shall not deny, monitor, or restrict a child's communication with the child's social worker, attorney, Court Appointed Special Advocate, guardian ad litem, or clergy. The licensee may establish a schedule and rules for communication to prohibit undue interference with programming.
4. A licensee shall not deny, monitor, or restrict communications between a child and the child's parent, guardian, or friends except as prescribed:
   a. By court order;
   b. In the child's service plan, which shall contain specific treatment reasons for the restriction which shall be time limited; or
   c. In the facility's policy and statement of purpose required by R6-5-7423.
5. The licensee may require a child to open mail in the presence of staff in order to inspect the mail for contraband.
6. When a licensee is monitoring a communication as allowed in subsection (A)(4) above, the licensee shall tell the parties to the communication about the monitoring.

B. The licensee shall have written policy and procedures to govern situations when a child temporarily leaves the facility on a visit or outing with a person other than a staff member. The procedures shall include:
1. A method for recording the child's location, the duration of the activity, and the anticipated and actual time of the child's return;
2. The name, address, and telephone number of the person responsible for the child while the child is absent from the facility; and
3. A procedure for action if a child fails to return.

C. Subsection (B) does not apply to regularly scheduled trips to school.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7449. Educational and Vocational Services; Work Assignments
A. The licensee shall have a written policy regarding its educational program or a plan for ensuring that each child attends an educational program in accordance with state and local laws.
B. Within 10 local school days of a child's admission to a facility, the licensee shall arrange for the educational needs of the child. The arrangements shall:
1. Meet the child's individual needs;
2. Be consistent with the child's Individual Education Plan (I.E.P.) if applicable; and
3. Comply with federal and state education laws.

C. The licensee shall communicate with staff at an educational program in which a child in care is enrolled to discuss the child's progress. At a minimum, the licensee shall attend scheduled parent-teacher conferences.
D. If a child's service plan provides for the child to receive vocational services, the licensee shall comply with the plan requirements.
E. The licensee shall provide children in care with:
1. Space for quiet study;
2. Developmentally appropriate supervision and assistance with homework; and
3. Access to necessary reference materials.

F. The licensee may use work assignments to provide an instructional experience for children in care, but shall not use a child as an unpaid substitute for staff.

G. A work assignment shall be developmentally appropriate for a child, and scheduled at a time that does not interfere with other routine activities such as school, homework, sleep, and meals.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7450. Recreation, Leisure, Cultural Activities, and Community Interaction

A. A licensee shall have a written plan for making a variety of cultural, religious, indoor and outdoor recreational and leisure opportunities available for children in care. The plan shall:
1. Reflect the interests and needs of the children in care, including an allotment of time for children to pursue individual interests, and time to address the special needs of the children in the living unit;
2. Provide for use of community resources such as schools, museums, libraries, parks, recreational facilities, and places of worship; and
3. Specify procedures for children's participation in community activities and use of community resources.

B. A licensee shall help children in care learn about the community in which the facility is located and use community resources, as developmentally appropriate.

C. A licensee shall arrange transportation and supervision so that children in care can attend community activities and maximize use of community resources.

D. The licensee shall make available recreational equipment that is suitable to the size, age, and developmental level of children in care.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7451. Religion, Culture, and Ethnic Heritage

A. A licensee shall have a written description of:
1. Its religious orientation, if any;
2. Any religious practices observed at a facility;
3. Any restrictions on admission based on religion; and
4. How the licensee provides opportunities for each child to participate in religious activities in accordance with the faith of the child or the child's parent or guardian.

B. A licensee's program and the service plans of children in care shall reflect consideration of and sensitivity to the racial, cultural, ethnic, and religious backgrounds of children in care.

C. A licensee may encourage children to participate in religious, cultural, and ethnic activities but shall not require children to participate unless otherwise provided in the licensee's statement of purpose and program description.

D. If a child asks to change religious affiliation while in care, the licensee shall obtain the written permission of the child's parent or guardian before assisting the child in making the change. A licensee is not required to obtain this permission if a child changes religious affiliation without the licensee's assistance.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7452. Medical and Health Care

A. General health care.
1. A licensee shall have a written plan for meeting the preventive, routine, and emergency physical and mental health needs of children in care. The plan shall identify where and from whom children at a facility may obtain qualified health care, 24-hours per day, seven days per week.
2. A licensee shall ensure that children in care receive:
   a. Preventive health services, including routine medical examinations and dental cleanings and examinations; and
   b. The following health services, if necessary:
      i. Evaluation and diagnosis,
      ii. Treatment, and
      iii. Consultation.
3. A licensee shall ensure that a child in care receives a developmentally appropriate explanation of any health treatment the child receives, in a language and manner the child can understand.
4. A licensee shall not ignore a child's complaints of pain or illness and shall document persistent complaints and any actions taken in response to the complaints.

B. Medical care.
1. A licensee shall arrange for a physician, physician's assistant, or nurse practitioner to give a child a medical examination within one week of the child's admission unless:
   a. A licensed medical practitioner examined the child within the 45 days preceding the child's admission; and
   b. The licensee has a report of the examination as prescribed in R6-5-7438(E)(4)(a).
2. A licensee shall also arrange for a child in care to receive an annual medical exam from a physician, physician's assistant, or nurse practitioner.
3. The initial and annual medical examinations shall include:
   a. Screening for communicable disease unless restricted by law;
   b. Vision and hearing screening; and
   c. For children who wish to participate in sports or physically strenuous activities such as backpacking, an evaluation of the child's capacity to participate.
4. A licensee shall obtain a report of the examination, and, if applicable, a statement signed by the medical practitioner conducting the examination, or the practitioner's designee, regarding the child's capacity, fitness, and clearance to participate in sports or physically strenuous activities.
5. After attempting to determine a child's immunization history, a licensee shall arrange for the child to receive any routine immunizations and booster shots within 30 days of admission.

C. Dental care.
1. A licensee shall arrange for each child to have a dental examination within 60 days of admission unless the licensee is provided the written results of a dental examination conducted within six months prior to admission.
2. A licensee shall arrange for each child age 3 and older to receive a dental examination every six months.
3. In cooperation with the placing agency or person, a licensee shall arrange for a child to receive any prescribed dental care.

D. First aid. A licensee shall equip the residence of each living unit with at least the following first aid supplies:
1. Adhesive strip bandages;
2. Sterile, individually wrapped gauze squares;
3. Roller gauze;
4. Adhesive tape;
5. Individually wrapped non-stick sterile pads;
6. A triangular bandage to be used for a sling;
7. Disposable latex gloves;

8. A pair of scissors;
9. A pair of tweezers; and
10. A cardiopulmonary resuscitation mouth guard or mouth shield.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7453. Medications

A. A licensee shall have written policies and procedures governing medications. The policies and procedures shall specify:
1. The conditions under which medications can be prescribed and administered which shall be in accordance with any applicable laws;
2 The qualifications of the persons allowed to administer medications;
3. The qualifications of persons allowed to supervise self-administration of medication;
4. How a facility will document the prescription and administration of medication, medication errors, and drug reactions; and
5. How staff will notify a child's attending physician in cases of medication errors and drug reactions.

B. The licensee shall have a written medication schedule for each child who receives medication. The schedule shall include the following information:
1. Child's name;
2. Name of the prescribing physician;
3. Telephone number at which the prescribing physician can be reached in case of medical emergency;
4. Reason for prescribing the medication;
5. Date on which the medication was prescribed;
6. Generic or commercial name of the medication;
7. Dosage level and time of day when medication is to be administered, including any special administration instructions;
8. The date, time, and dosage administered; and
9. The signature of the person administering each dosage. If the medication is self-administered, the chart shall include the signature of the child and the person supervising the child's self-administration.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7454. Storage of Medications

A licensee shall store medications as prescribed in this Section.
1. Medications shall be kept in securely locked spaces that are not used for any other purpose and to which children do not have access.
2. All medications requiring refrigeration shall be stored separately from food items, in a locked container, in a refrigerator and under temperature ranges recommended by the manufacturer.
3. All prescription medication shall be kept in its original container which shall have a label with the following information:
   a. Child's name;
   b. Name of the medication;
   c. Prescribing physician;
   d. Date of purchase and, if known, expiration date; and
   e. Directions for administering.
4. All over-the-counter medication shall be kept in its original container with the manufacturer's label.
5. At least once every 90 days, the licensee shall dispose of all:
   a. Outdated medications;
   b. Medications for children no longer at the facility; and
   c. Medications specifically prescribed for an illness from which a child has recovered.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7455. Children's Medical and Dental Records

A licensee shall maintain health records for each child. The records shall include the information listed in this Section if available to the licensee.
1. The child's past medical history of:
   a. Immunizations,
   b. Serious illness or injuries,
   c. Surgeries,
   d. Known allergies, and
   e. Adverse drug reactions.
2. Developmental history.
3. Medication history.
4. History of any alcohol or substance abuse and treatment.
5. Immunizations provided while in care.
6. Medications received while in care and a record of any medication errors.
7. Copies of consents for treatment or care.
8. Authorization to participate in sports or physically strenuous activities, if applicable.
9. Reports of vision and hearing screening and physical and dental examinations.
10. Record of any treatment provided for specific illness or medical emergencies, including the name and location of medical personnel who provided treatment.
11. The name of the person or agency bearing financial responsibility for the child's health care.
12. Documentation showing the licensee's efforts, consistent with the terms of the placing agreement, to obtain glasses, hearing aids, prosthetic devices, corrective physical or dental devices, or any other health equipment recommended by a child's attending physician.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7456. Behavior Management

A. A licensee shall have written behavior management policies and procedures which shall:
1. Be developmentally appropriate for the children in care;
2. Be designed to encourage and support the development of self-control;
3. Describe the following:
   a. Behavior expectations of children;
   b. Consequences for violations of the licensee's policies and rules which shall be:
      i. Reasonably related to the violation; and
      ii. Administered without prolonged and unreasonable delay;
   c. Physical restraint and restrictive behavior management techniques used by the licensee;
   d. The kinds of behaviors warranting use of physical restraints or restrictive behavior management techniques;
   e. The licensee's methods of documenting use of physical restraints or restrictive behavior management techniques;

f. Behavior management techniques which require supervisory authorization or written documentation before being used;
g. The licensee's process for supervisory review to evaluate whether staff properly applied the restraints or techniques in a particular case; and
h. Behavior management techniques prohibited by the licensee.

B. The licensee's staff are responsible for control and discipline of children in care. The licensee shall not allow children to discipline other children.

C. The licensee shall not threaten a child or allow any child to be subjected to maltreatment, abuse, neglect, or cruel, unusual, or corporal punishment, including the following practices:
1. Spanking or paddling a child;
2. All forms of physical violence inflicted in any manner upon the body;
3. Verbal abuse, ridicule, or humiliation;
4. Deprivation of shelter, bedding, food, water, clothing, sufficient sleep, or opportunity for toileting;
5. Force-feeding, except as prescribed by a licensed medical practitioner;
6. Placing a child in seclusion;
7. Requiring a child to take a painfully uncomfortable position, such as squatting or bending for extended periods of time; and
8. Administration of prescribed medication or medication dosage without specific physician authorization.

D. To determine whether a licensee has violated subsection (C)(7), the Licensing Authority shall consider all the circumstances at the time of the action, including the following:
1. The child's physical condition;
2. Whether the child was taking any medications that may have affected the child's ability to perform the action, such as psychotropic medications or antibiotics;
3. The climatic conditions under which the child was performing the action, such as intense heat or cold, rain, or snow;
4. The level of force, if any, the licensee used to require the child to perform the activity and whether any use of force resulted in injury to the child; and
5. Whether the activity was consistent with the licensee's program description and procedures.

E. The behavior management practices listed in this subsection are restricted. A licensee may use a restricted practice only when the licensee satisfies the conditions listed in subsection (F) and any additional conditions listed in this subsection.
1. Required physical exercises such as running laps or performing push-ups, and assignment of physically strenuous activities, except:
   a. As expressly prescribed in a child's service plan and as part of a regular physical conditioning program, or as part of a work experience that meets the requirements of R6-5-7449(F) and (G);
   b. With documented clearance by a physician who is knowledgeable about the physical activities in which the child will participate; and
   c. Within sight supervision of staff.
2. Disciplinary measures taken against a group because of the individual behavior of a member of the group.
3. Denial of visitation or communication with significant persons outside the facility solely as a consequence for inappropriate behavior.
4. Use of a mechanical restraint unless:
   a. The licensee's policy lists the qualifications of staff allowed to use the restraint;
   b. Staff allowed to use the restraint have received training in the proper use of the restraint;
   c. The licensee has documentation of the restraint training in the personnel file of the staff member;
   d. Use of the restraint is authorized in a child's individual service plan; and
   e. Staff have tried less restrictive measures which have failed.
5. Physical restraint, except:
   a. When the child needs restraint to prevent danger to the child or danger to another; and
   b. After staff have tried less restrictive measures which have failed.

F. A licensee may use a restricted practice only when the practice and the circumstances warranting its use are:
1. Consistent with the licensee's program description and purpose;
2. Described in the licensee's behavior management policy;
3. Used as prescribed in this Section; and
4. Not otherwise prohibited by these rules.

G. If a licensee cannot use a specific physical restraint or behavior management technique on a particular child, the child's service plan shall describe the restriction.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7457. Body Searches

If a licensee permits a body search of children in care, the licensee shall have a written policy describing the conditions warranting a body search and the procedures for conducting the search.
1. When searching a child, staff shall use the minimum amount of physical contact required to determine if the child has contraband.
2. The licensee shall not conduct an internal body cavity search on a child.
3. The licensee shall not use any instruments to search a child.
4. The licensee shall not conduct a strip search beyond underwear.
5. Unless a licensed medical practitioner is searching a child, a person of the same gender as the child shall do the search.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7458. Buildings; Grounds; and Water Supply

A. Structures and Improvements: A licensee shall maintain a facility's structures and improvements in good repair, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:
1. Repair doors, windows and other building features that protect a building from weather damage or pest infestation, within 48 hours of finding that the building part is in disrepair;
2. Document efforts to make or obtain repairs if repairs cannot be completed in 48 hours;
3. Keep buildings free of vermin infestation;
4. Keep exits free of obstruction or impediments to immediate use; and
5. Have barriers appropriate to the developmental needs of children in care to prevent falls from porches and elevated areas, walkways, and stairs.

B. Exits: The licensee shall equip each building used by children with exits as prescribed in this subsection.

1. Each building shall have at least two exterior means of egress on each floor.
2. Exits above ground level shall have an outside fire escape or a fire-resistant stairwell that has been approved by the state or a local fire inspector.
3. Exit doors shall have only locks that allow the doors to be opened from the inside without use of a key or knowledge of special or restrictive operating procedures.

C. Grounds: A licensee shall maintain a facility's grounds in good condition, free from danger to health or safety, and as prescribed in this subsection. The licensee shall:
1. Store garbage and rubbish in non-combustible, covered containers, separate from play areas;
2. Remove refuse and recyclables from the building at least once a day;
3. Remove refuse and recyclables from the facility grounds at least once a week.
4. Use safeguarding measures to separate children in care from potentially hazardous areas on or near the facility grounds;
5. Maintain fences and other barriers in good repair; and
6. Locate and install playground or recreational equipment at the facility in accordance with the manufacturer's instructions and recommendations, and maintain the equipment in good repair and in accordance with the manufacturer's instructions and recommendations.

D. Water supply: If a facility's water is from any source other than an approved public water supply, the licensee shall obtain a written water analysis report, showing that the water is potable and meets the applicable requirements for safe drinking water in 18 A.A.C. 4. The licensee shall get the analysis and report from a laboratory certified by the Department of Health Services before initial operation and each annual renewal.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7459. Building Interior

A. A licensee shall ensure that a facility's physical plant can structurally accommodate the physical and program needs of all children in care according to the standards prescribed in this Article and the licensee's own program description.

B. The licensee shall keep a facility clean and sanitary.

C. The licensee shall have and maintain furnishings as prescribed in this subsection.
1. All living areas shall have furniture designed to suit the size and capabilities of the children in care.
2. A licensee shall replace or repair broken, dilapidated, or defective furnishings and equipment.
3. A licensee shall have mirrors in the facility to permit children in care to examine their personal appearance.
4. A licensee shall secure the mirrors to walls at heights convenient to the children in care.

D. A licensee shall ensure that all spaces used by children have outside ventilation from a window, louvers, air conditioning, or other mechanical equipment. A window or door used for outside ventilation shall have a screen.

E. A licensee shall maintain a facility's residential environment at temperatures that do not:
1. Exceed 85° F,
2. Fall below 65° F during daylight hours, or
3. Fall below 60° F during sleeping hours.

F. A licensee shall use thermometers scaled at no more than 2 degree increments to determine temperature.

G. A licensee shall not use free-standing stoves that use wood, sawdust, coal, or pellets, or portable heaters as the primary source of heat for a residential area.

H. A licensee shall safeguard hot water radiators or steam radiators and pipes or any other heating device capable of causing a burn.

I. A licensee shall maintain and use all electrical equipment, wiring, cords, switches, sockets, and outlets in good working order, under safe conditions, in accordance with the manufacturer's recommendations, and as prescribed in this subsection.
1. Electrical outlets in areas accessible to children younger than 6 shall have safety plugs or plates.
2. The licensee shall not:
   a. Use extension cords exceeding 7 feet in length,
   b. Allow extension cords to be connected together to extend their length, or
   c. Allow extension cords to run across or through a room or to pass from one room into another.

J. A licensee shall provide illumination for a facility's rooms, corridors, and stairways so that children and personnel can perform activities and tasks safely and without eye strain.

K. A licensee shall illuminate a facility's outdoor walkways and premises so that children and personnel using areas at night can perform activities and tasks safely.

L. A licensee housing more than 10 children shall install and maintain emergency lighting systems in children's living quarters.
1. In this subsection, "emergency lighting system" means a battery or generator operated system that:
   a. Automatically activates if electrical power fails; and
   b. Provides sufficient light for persons to exit safely in an emergency.
2. If a licensee provides written documentation showing that a facility's emergency lighting system meets applicable city or county building codes for such systems, the system is presumed adequate to satisfy this subsection.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7460. Kitchens; Food Preparation; and Dining Areas

A. A licensee shall maintain a facility's kitchen and dining areas, and shall handle food, as prescribed in this Section.

B. The licensee shall:
1. Equip a facility kitchen used for meal preparation with the fixtures, appliances, equipment, tools, and utensils ("kitchen equipment") necessary for the safe and sanitary preparation, storage, service, and cleanup of food;
2. Keep kitchen equipment clean and in good working order;
3. Not use defective, damaged, tin, or aluminum dishes or utensils;
4. Not use disposable dinnerware or flatware on a daily basis unless the licensee provides evidence, at the time of initial licensure and at each renewal, that disposable items are necessary to protect the health or safety of children in care;
5. Maintain the temperature of potentially hazardous food at or below 45° F or above 140° F, except when the food is being handled or served;
6. Cover all food that is to be transported outside of the kitchen and dining areas of the facility; and
7. Not use home canned foods.

C. If a facility has more than 20 children, the licensee shall comply with the requirements in A.A.C. R9-8-132 through R9-8-137.

D. If a facility has less than 21 children, the licensee shall comply with A.A.C. R9-8-113, R9-8-115, R9-8-116, R9-8-117, and R9-8-121 through R9-8-127, and shall have:
1. One refrigerator for each 10 children at a facility; and
2. A three-compartment sink; or
3. A National Sanitation Foundation (NSF)-listed dishwasher; or
4. A domestic dishwasher with a sanitizer cycle.

E. A facility shall have clean dining areas and tables which allow children, staff, and guests to eat together.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7461. Sleeping Areas and Furnishings

A. A licensee shall provide each child in care with a designated area for rest and sleep as prescribed in this Section.
1. A licensee shall not use mobile dwellings, trailers, or vehicles as sleeping quarters.
2. The licensee shall provide children in care with bedroom space that:
   a. Has a direct source of natural light;
   b. Has a window that:
      i. Opens to the outside without a grill or other impediment to immediate, emergency exit;
      ii. Can be easily opened from the inside;
      iii. Measures at least 22 inches on each side; and
      iv. Has a bottom sill that is no more than 48 inches from the floor; and
   c. Is at least:
      i. A 74 square foot floor area for a single occupant;
      ii. A 50 square foot floor area for each occupant in a multiple sleeping area; or
      iii. A 40 square foot floor area for each crib.
3. The licensee shall provide each child in care with a bed that:
   a. Is proportional to the child's height,
   b. Is at least 30 inches wide,
   c. Has a solidly constructed bed frame, and
   d. Has safety railings if developmentally appropriate for the child using the bed.
4. If a licensee uses a bunk bed, the bed shall be limited to a double bunk, and shall have sufficient head room to allow the upper occupant to sit up.
5. A licensee shall use only cribs that have:
   a. Bars or slats no more than 2 3/8 inches apart;
   b. A mattress that fits snugly into the crib frame so that there is no space between the mattress and frame; and
   c. No openings through which a child could place his or her head.
6. A licensee shall provide sheets, pillow cases, and blankets for each child and shall maintain bedding in good repair, without tears or stains.
   a. The licensee shall ensure that sheets and pillowcases are washed at least weekly and more frequently if necessary.
   b. The licensee shall use water resistant bedding when necessary.
7. A licensee shall provide each child with a dresser or other storage space adequate to contain the child's belongings and a designated space for hanging clothing in or near the child's bedroom.

B. The square footage area prescribed in subsection (A)(2)(c) is presumed adequate. If a licensee operates a barracks type facility that does not meet these square footage requirements, the licensee shall present a written plan showing how the licensee's square footage provides enough space for sleeping, rest, study, recreation, ingress, and egress in an emergency. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.

C. A licensee shall not have bedroom doors that can be locked.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 4032, effective September 29, 2000 (Supp. 00-3).

R6-5-7462. Bathrooms

A. A licensee shall maintain bathrooms and bathroom fixtures in good operating and sanitary condition, and as prescribed in this Section.
1. The licensee shall have facility bathrooms equipped with:
   a. At least one wash basin and one toilet for every six children in care;
   b. At least one bathtub or shower for every eight children in care;
   c. Cold and hot running water, with enough hot water to allow each child a daily bath or shower;
   d. Bathtubs and showers that are slip-resistant; and
   e. Toilets and bathtubs or showers which allow a child to have privacy, as developmentally appropriate, or as otherwise prescribed in written program policy.
2. The licensee shall not permit children age 5 or older who are of different genders to share a bathroom at the same time.
3. The licensee shall equip bathrooms to facilitate maximum self-help by children through one or more of the following methods:
   a. Providing children with step-stools to reach a sink,
   b. Providing smaller sized bathroom fixtures,
   c. Providing training toilets,
   d. Placing towel racks and dispensers at lower heights, or
   e. Other similar or comparable methods.
4. A licensee shall have bathrooms large enough to permit staff to help children who require it.
5. A licensee shall provide bathrooms with sufficient toilet paper, towels, soap, and other items required to maintain good personal hygiene, or shall provide children with personal supplies of these items.

B. The bathroom fixture requirements prescribed in subsections (A)(1)(a) and (b) are presumed adequate. If a licensee operates a barracks type facility which does not meet these requirements, the licensee shall present a written plan showing how the licensee's bathroom facilities permit children in care to maintain adequate hygiene. The Licensing Authority shall review and approve the plan if it is consistent with the licensee's described program and does not pose a risk of harm to children in care.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7463. Other Facility Space; Staff Quarters

A. A licensee shall ensure that a facility has:

1. A place other than children's living areas to serve as an administrative office for records, secretarial work, and bookkeeping; and
2. Space for private discussions and counseling sessions between individual children and staff.

B. If a licensee has staff who reside at the facility, the licensee shall provide those staff with living and sleeping space that is separate from children's areas, including a separate bathroom. The licensee shall provide the children of these staff, who also reside at the facility, with a residential environment that meets the requirements of this Article for children in care.

C. A licensee operating a barracks type facility that has been approved as described in R6-5-7461(B) and R6-5-7462(B) is not required to provide separate space as described in subsection (B).

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7464. Fire, Emergency, and Fire Prevention

A. Emergency Procedures: A licensee shall have written procedures for staff and children to follow in case of emergency or disaster (natural, medical, or human-caused). The procedures shall include the following:
1. Provisions for the evacuation of buildings, including the evacuation of children with physical disabilities;
2. Assignment of staff to specific tasks and responsibilities;
3. Instructions on the use of alarm systems and signals;
4. Specification of evacuation routes and procedures, with clearly marked diagrams; and
5. Notification as prescribed in R6-5-7434.

B. Emergency Practices and Drills: A licensee shall prepare staff and children to respond to emergencies as prescribed in this subsection.
1. The licensee shall train all staff to perform assigned tasks during emergencies, including the location and use of fire fighting equipment.
2. The licensee shall train staff and children to report fires and other emergencies in accordance with written emergency procedures.
3. The licensee shall post evacuation procedures in conspicuous locations throughout all buildings.
4. The licensee shall train staff and children in evacuation procedures and conduct emergency drills at least once a month as prescribed in this subsection.
   a. Practice drills shall include actual evacuation of children to safe areas.
   b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
   c. All persons in the building at the time of a drill shall participate in the drill.
5. A licensee shall maintain a record of all emergency drills. The record shall include:
   a. Date and time of drill,
   b. Total evacuation time,
   c. Exits used,
   d. Problems noted, and
   e. Measures taken to ensure that children understand the purpose of a drill and their responsibilities during a drill.

C. Fire Prevention and Control: A licensee shall have and maintain fire prevention and safety equipment as prescribed in this subsection.
1. In a facility's residential environment, the licensee shall install and maintain smoke detectors according to the manufacturer's instructions, recommendations, and test specifications and shall maintain smoke detectors in good working order. Each smoke detector shall have a signal to indicate that batteries are low or are not working properly.
2. The licensee shall put a smoke detector in each separate sleeping area.
3. The licensee shall clean and test smoke detectors at least every three months. The licensee shall keep a written record of the cleaning and testing at the facility.
4. A licensee shall install and maintain portable fire extinguishers appropriate in number and size to the area to be protected.
5. A licensee shall have a qualified person inspect and, if necessary, recharge fire extinguishers at least once a year and immediately after use.
6. A licensee shall:
   a. Document the dates that a fire extinguisher is charged and the person or agency responsible for charging it; and
   b. Attach the documentation to the extinguisher.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7465. General Safety

A. Ground Floor: A licensee shall house non-ambulatory children and children younger than 6 only on the ground floor.

B. Licensees that provide services to young adults:
1. A licensee that provides services to young adults shall provide adequate safety information and individualized instruction to promote the safe use of a substance or item that is:
   a. Required to be safeguarded under this Section; and
   b. Necessary for the young adult's self-sufficiency, such as laundry and cleaning supplies, tools, and kitchen knives.
2. A licensee that provides services to young adults placed in care with their own children shall safeguard substances and items in a manner appropriate to protect the youngest child in residence.

C. Dangerous objects: A licensee shall safeguard all potentially dangerous objects, including:
1. Firearms and ammunition;
2. Recreation and hunting equipment;
3. Household and automotive tools;
4. Sharp objects such as knives, glass objects, and pieces of metal;
5. Fireplace tools, matches, and other types of lighters;
6. Machinery;
7. Electrical wires, boxes, and outlets;
8. Gas appliances;
9. Chemicals, cleaners, and toxic or flammable substances;
10. Swimming pools, ponds, spas, and other natural or artificial bodies of water; and
11. Motorized vehicles.

D. Water Temperature: A licensee shall maintain water that is accessible to children for personal use at a temperature at or below 120° F.

E. Gas appliances:
1. A licensee shall have a licensed and bonded heating and cooling technician annually inspect all gas-fired devices at a facility. The licensee shall get a written report of the inspection for submission to the Licensing Authority at the time of license renewal.

2. A licensee shall equip all gas-fired devices with an automatic pilot gas shut-off control.
3. A licensee shall remove the valves from unused gas outlets and cap the disconnected gas line with a standard pipe cap.
4. A licensee shall not use unvented water heaters.
5. A licensee shall not use kerosene or gasoline for lighting, cooking, or heating.
6. If a licensee uses a natural or propane gas burning device inside a facility, the licensee shall:
   a. Install, test, and check carbon monoxide monitoring equipment in a facility's residential environment according to the manufacturer's instructions;
   b. Maintain the monitoring equipment in good working condition; and
   c. At the facility, keep a copy of the manufacturer's instructions, and, for one year, a record of the tests.

F. Finishes and surfaces:
1. A licensee shall not surface walls or ceilings with materials that contain lead except as allowed by law for protection from wood, pellet, or peat burning stoves.
2. A licensee shall not have any walls, equipment, furnishings, toys, or decorations surfaced with lead paint.
3. A licensee that accepts children who are under age 6, developmentally disabled, or severely emotionally disturbed, shall maintain the facility free of lead paint hazards, including permanent removal of any paint that a child may ingest.

G. Toxic and Flammable Substances:
1. A licensee shall ensure that any poisons and toxic or flammable substances used at a facility are used in a manner and under conditions that will not contaminate food or be hazardous to children.
2. A licensee shall ensure that containers of poisons and toxic or flammable substances are prominently and distinctly marked or labeled for easy identification of contents.
3. A licensee may burn trash only when:
   a. Local authorities and ordinances allow burning;
   b. The fire is at least 50 feet from any building used for children's residences; and
   c. An adult supervises any child involved in the burning.
4. A licensee shall not use charcoal or gas grills indoors or on covered porches.

H. Firearms, Weapons, and Recreational and Hunting Equipment:
1. A licensee shall ban firearms, explosives, and ammunition from a facility and grounds, except a licensee may allow the following:
   a. Firearms maintained and used exclusively by trained security guards; and
   b. Non-functional, permanently disabled firearms used for ceremonial purposes if such use is documented in the licensee's policy and procedures.
2. A licensee shall keep bows and arrows, knives, and other potentially hazardous hunting and recreational equipment in locked secure storage that is not accessible to children.

I. Tools and Equipment: A licensee shall maintain lawn and garden equipment and maintenance tools and equipment safe and in good repair, and shall allow children to use them only under the supervision of staff. Depending on the developmental level of the child, the supervision need not be direct supervision.

J. Telephone service:
1. A licensee shall equip each living unit that does not house young adults with 24-hour telephone service or an intercom system linked to an outside telephone service, or
2. A licensee that provides services to young adults shall provide a device in each living unit that allows a young adult to immediately summon on-duty staff or emergency services. In addition, the licensee shall provide a telephone onsite. The licensee shall provide written and verbal information to each young adult explaining how to summon assistance in the event of an emergency.
3. A licensee shall conspicuously post, adjacent to the telephone:
   a. The address and telephone number of the facility; and
   b. Emergency telephone numbers, including fire, police, physician, poison control, Child Protective Services, and ambulance.

K. Smoking:
1. A licensee shall not expose a child in care to tobacco products or smoke.
2. A licensee shall not allow any person to use tobacco products inside buildings.
3. A licensee shall not allow a child in care to use or possess tobacco products.

L. Animals:
1. The licensee shall not maintain, at a facility, any animal that poses a danger to children in care.
2. The licensee shall have written evidence that dogs kept at a facility have current vaccinations against rabies.

Historical Note

Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2). Amended by emergency rulemaking at 12 A.A.R. 2233, effective June 1, 2006 for 180 days (Supp. 06-2). Emergency renewed at 12 A.A.R. 4732, effective November 28, 2006 for 180 days (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 2049, effective May 21, 2007 (Supp. 07-2).

R6-5-7466. Swimming Areas

A. A licensee shall fence an outdoor swimming pool to separate it from all buildings, with a fence that:
1. Is at least 5 feet high, as measured on the exterior side of the fence; and
2. Has a self-closing, self-latching gate that opens away from the swimming pool. The licensee shall maintain the latching equipment in good working order.

B. If the licensee accepts children younger than 6, the fence shall:
1. Have no opening through which a spherical object of 4 inches in diameter can pass;
2. Have horizontal components which:
   a. Are spaced at least 45 inches apart, measured vertically; or
   b. Do not have any openings greater than 1 3/4 inches, measured horizontally; or
3. Not have any openings for handholds or footholds, or any horizontal components, that can be used to climb the fence from the outside.

C. Subsections (A) and (B) do not apply to outdoor swimming pools that are entirely surrounded by permanent walls or buildings with doors that can be locked, so long as the walls or building meet the requirements for fencing set forth in subsections (A) and (B).

D. A licensee shall lock all entrances to a swimming pool when the pool is not in use.

E. A licensee shall maintain the following life-saving equipment in good repair and readily accessible to the swimming pool:
1. A ring buoy with ½-inch width rope that is at least half the distance of the pool measured at its longest point, plus 10 feet; and

2. A shepherd's crook attached to its own pole.

F. At least one of the staff members supervising children in a pool, shall remain out of the water.

G. When a pool is in use, a licensee shall keep a daily log to record water quality test results of an on-grounds swimming pool and shall maintain the pool free from contamination in accordance with 9 A.A.C. 8, Article 8.

H. The licensee shall, when chlorination is used, maintain a free chlorine residual of between 0.1 and 4.0 parts per million, and a pH range of 7.0 to 8.0. A licensee may add dry or liquid chemical sources directly to pool water only when enough time exists for dispersal before use.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7467. Access; Transportation; Outings

A. Access.
1. A facility shall be accessible by public or private motor vehicle.
2. If the facility cannot be accessed by a road that is passable by motor vehicle 12 months of the year the licensee shall have alternative transportation arrangements to provide access to the facility.

B. Transportation.
1. A licensee shall provide, arrange, or negotiate responsibility for arranging, with the placing agency or person, transportation required to implement a child's service plan.
2. A licensee shall provide staff supervision in any vehicle the licensee uses to transport a child in care.

C. Outings.
1. For every facility sponsored outing which is not part of the daily routine, such as a recreational trip of four hours or more, or an outing where emergency medical services cannot respond within 12 minutes, a licensee shall maintain, at the facility, a record of the following information:
   a. A list of children participating in the outing;
   b. Departure time and anticipated return time;
   c. License plate numbers of every vehicle used for the outing; and
   d. Name, location, and, if known, telephone number of the destination.
2. The licensee shall give the driver of a vehicle written emergency information on each child who is participating in the outing and riding with that particular driver.
3. The person supervising the child shall keep the information during the outing. The information shall include:
   a. Each child's medication requirements, if any;
   b. Common and known potential adverse reactions a child may have to a medication;
   c. Adverse reactions a child may have as the result of delay in administration of medication; and
   d. Any other adverse reaction a child is likely to have due to the child's special needs, including allergic reactions to particular substances or insects.
4. The licensee shall tell the driver about a child's particular needs or problems which may reasonably cause difficulties during transportation, including seizures, tendency toward motion sickness, disability, anxiety, or other phobias.

D. Extended outings: If a licensee takes children in care on an outing that lasts more than 30 consecutive days, the licensee shall:
1. Obtain court permission for any children who are court wards;
2. Comply with the requirements in R6-5-7469 through R6-5-7471 governing outdoor experience programs.

E. Vehicles.
1. A licensee shall ensure that all vehicles used for the transportation of children in care:
   a. Are mechanically sound and in good repair,
   b. Conform to applicable motor vehicle laws, and
   c. Have equipment appropriate to the terrain and the weather.
2. The licensee shall not allow the number of individuals in a vehicle used to transport children in care to exceed the number of available seats and seat belts in a vehicle other than a bus. If the vehicle is a bus, the licensee shall not exceed the maximum stated occupancy on the bus inspection certificate.
3. A licensee serving nonambulatory children or children with disabilities shall provide access to transportation that accommodates the children's special needs and disabilities.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7468. Special Provisions for Shelter Care Facilities

A. General Requirements: A licensee operating a shelter care facility shall comply with all requirements prescribed in this Article, unless otherwise provided in this Section.

B. Admission Policy and Practice:
1. If a child has already been in shelter care for more than 42 days, a licensee shall not admit the child into shelter care at the licensee's facility, or permit the child to continue residing at the licensee's facility, unless the licensee has:
   a. Asked the child's placing agency or person to have a multidisciplinary team:
      i. Assess the child through a review of the child's records or in person; and
      ii. Develop a service plan for the child; and
   b. Documented the request in the child's record.
2. When a child self-refers to a shelter care facility, the licensee shall, within 24 hours of the child's arrival:
   a. Notify the Department or the child's guardian; and
   b. Document the placing agency or person's consent for the child's continued placement in a written agreement with the placing agency or person, or by obtaining a court order.
3. A licensee does not have to obtain medical information and consents before or at the time of a child's admission to a shelter care facility as prescribed in R6-5-7438(E)(4) and (5), but shall document attempts to obtain the medical consents from the placing agency or person within two days of the child's admission.
4. At the time of a child's admission, the licensee is not required to obtain the comprehensive intake assessment required by R6-5-7438(D), but shall work with the placing agency or person to compile information on and assess the child's current social, behavioral, psychological, developmental, health, legal, family, and educational status, as applicable to the child.

C. Staff-child ratio: A shelter care facility shall comply with the staff-child ratios prescribed in R6-5-7437, except that a licensee who accepts six or more children in care at a shelter facility shall have at least one awake staff member on duty during sleeping hours.

D. Staff development: In addition to the training requirements prescribed in R6-5-7433, a licensee shall train staff members

who work at a shelter care facility to recognize the signs and effects of:
1. Substance use and abuse,
2. Common childhood illness, and
3. Communicable disease.

E. Medical care: A shelter care facility does not have to provide or arrange a medical examination as required by R6-5-7452(B)(1) unless the general health assessment required by R6-5-7438(E)(9) indicates a need for further medical attention.

F. Service planning: Unless a child remains in continuous shelter care for more than 42 consecutive days, a licensee operating a shelter care facility is not required to comply with the R6-5-7441 regarding service planning.

G. Children's records: A licensee shall maintain a record for each child in a shelter care facility as prescribed in R6-5-7428 except the licensee need not:
1. Comply with R6-5-7441, except as otherwise provided in subsection (F) above; or
2. Maintain treatment or clinical records and reports or progress monitoring notes as required by R6-5-7428(9) and (13).

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7469. Special Provisions and Exemptions for Outdoor Experience Programs

A. A licensee operating an outdoor experience program shall comply with the requirements in 6 A.A.C. 5, Article 74, except as otherwise provided in this Section.

B. An outdoor experience program shall not accept children younger than age 8.

C. An outdoor experience program is exempt from the requirements set forth in the following rules:
1. R6-5-7458. Buildings; Grounds; Water Supply;
2. R6-5-7459. Building Interior;
3. R6-5-7460. Kitchens; Food Preparation; and Dining Areas;
4. R6-5-7461. Sleeping Areas and Furnishings;
5. R6-5-7462. Bathrooms;
6. R6-5-7463. Other Facility Space; Staff Quarters;
7. R6-5-7464. Fire, Emergency, and Fire Prevention;
8. R6-5-7465. General Safety;
9. R6-5-7466. Swimming Areas;
10. R6-5-7467. Access; Transportation; Outings; and
11. R6-5-7468. Special Provisions for Shelter Care Facilities.

D. An outdoor experience program shall comply with the requirements in R6-5-7470 and R6-5-7471.

E. If there is a conflict between the requirements set forth in R6-5-7401 through R6-5-7468 and the requirements set forth in R6-5-7469 through R6-5-7471, the latter requirements govern.

Historical Note
Adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7470. Planning Requirements for Outdoor Experience Programs

A. Definitions. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.

B. Trip itinerary. The agency shall develop a tentative day-to-day itinerary and a trip map for each trip prior to departure. One copy each of the itinerary and map shall be distributed as follows: to the agency for its office files; to the mobile program staff; when appropriate, to local authorities at each point on the itinerary before departure; to the child placing agency representative for each child who will be departing on the trip, and to the Department licensing representative. When major amendments to the itinerary are necessary due to unforeseen circumstances on the trip, written notification to the designated individuals shall be made. The itinerary shall reflect the following:
1. The travel schedule shall allow for daily periodic rest stops, relaxation, exercise, and personal time.
2. The travel schedule shall not exceed five consecutive days without at least two full intervening non-traveling days, unless emergency conditions such as storms force travel to safer sites.
3. The travel schedule shall specify the number of days of the trip, including departure and return dates and times, and mileage to be covered each day.
4. The travel schedule shall specify the route, specific tentatively planned locations of overnight stops, and activities in which children will participate.
5. The travel schedule shall specify the mode of transportation.

C. Trip plans. The agency shall develop written plans prior to the departure of each trip. These plans shall include:
1. The name, age, sex, address, and emergency phone number of each staff participant and of each child's parent or guardian and placing agency;
2. The exact location and access route for emergency rescue, search, fire, and medical assistance and law enforcement authorities at each program stop or location including the names, addresses, telephone numbers of other alternative means of communication with such authorities in case of an emergency. This information shall be included and identified on the trip map;
3. Contingency plans to deal with medical problems, fire, natural disasters, lost children, and other emergencies;
4. Plans for the care of any person who, for any reason, must be excluded from the program for a period of time;
5. Provision for and storage within ready access of the program staff, documents which fully identify the group, its leadership, ownership of equipment, purpose, insurance coverage, home base, and which contain completed health history forms and emergency treatment release forms;
6. Identification of appropriate sources or locations for water, food, doing laundry, bathing, liquid and solid waste, and garbage disposal;
7. A scheduled progress and condition report system between the mobile program and the agency administrator;
8. The maintenance by staff of a trip log which details each day's operation including travel time, mileage covered, and occurrences of the day;
9. The safe storage for all supplies and equipment while in transit as well as at the campsites.

D. Pre-departure procedures
1. The appropriate permissions shall be secured, if possible prior to departure, for traveling on roads and properties, using sites, and building fires.
2. Prior to departure, each child shall receive medical clearance from a physician in order to participate in the mobile portion of the program.
3. Prior to departure, all children and staff shall receive instruction in the safe and proper use of all equipment to be used on the trip.
4. Prior to departure, all children and staff shall be oriented as to safety regulations, emergency procedures, and transportation to emergency facilities or personnel, or both.

5. Prior to departure, the route, activities and logistics shall be approved in writing by the agency administrator.
6. An emergency liaison coordinator shall be appointed prior to departure. This coordinator or the coordinator's designee shall be available on a 24-hour basis. This person shall be located at the agency administrative office, and shall be at least 21 years of age and shall possess the following information about the program:
   a. Names of individuals on the trip, including the staff member in charge;
   b. Exact trip itinerary;
   c. Number of days, including departure and return dates and times;
   d. Rescue and evacuation plans and locations;
   e. Pertinent medical information about program participants.

Historical Note

Renumbered from R6-5-7307 to R6-5-7470 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

R6-5-7471. Special Physical Environment and Safety Requirements for Outdoor Experience Programs

A. Definition. As used in this Section, the term "agency" means a licensee operating an outdoor experience program.

B. Campsite location
1. General. The agency shall conduct activities on sites appropriate for the children in terms of individual needs, program goals, and access to service facilities.
2. Hazards
   a. When selecting a campsite, the agency shall consider supervision of children, security, evacuation routes, animal hazards, and weather conditions, including the possibilities of lightning or flood.
   b. A campsite shall be located on land that provides good drainage. A campsite shall not be located in a river bed or desert wash.
   c. A campsite shall be free of debris, poisonous vegetation, and uncontrolled weeds or brush.
   d. Children shall be warned and protected from hazardous areas such as traffic, cliffs, sinkholes, pits, falling rock or debris, abandoned excavations and poisonous vegetation. Hazardous areas shall be guarded or posted to reduce the possibility of accidents.

C. Physical environment
1. Sleeping shelters
   a. All tents, teepees, or other sleeping shelters made of cloth shall be fire retardant or, if purchased after January 1985, shall be of the fiber-impregnated flame-retardant variety. Plastic sleeping enclosures of any type are prohibited.
   b. Tents or other shelters used for sleeping areas shall be easily cleanable and in good repair, shall be structured and maintained in safe condition and shall afford adequate protection against inclement weather.
   c. Tents or other types of temporary shelters shall provide sleeping space of not less than 15 square feet per person.
   d. Campfires and open flames of any type are prohibited within 21 feet of any tent, teepee, or other sleeping shelter.
   e. Smoking is prohibited within any sleeping shelter.
   f. All sleeping shelters shall be posted with a permanent warning "No open flame in or near this shelter." This warning shall be on a sign or stenciled directly on the shelter.
   g. Sleeping areas shall have direct exit access to the outside which is free of all obstruction or impediments to immediate use in the case of fire or other emergency.
2. Sleeping equipment
   a. Sleeping equipment shall be provided by the agency and shall be clean, comfortable, non-toxic and fire-retardant.
   b. Sleeping equipment shall provide reasonable insulation from cold and dampness. In addition to sleeping bag or blankets, insulation from the ground such as with a waterproof ground cloth or air or foam mattress shall be provided. A waterproof sleeping bag is not satisfactory.
   c. All sleeping equipment shall be laundered, dry cleaned, and otherwise sanitized between assignment to different children or staff. Bedding shall be aired at least once every five days and laundered, dry cleaned, and sanitized once every 30 days.
   d. Each child shall have a place for personal own sleeping equipment, clothes, and personal belongings. Such items shall be labeled or marked as to which child is using or owns such items.
3. Outdoor toilet areas
   a. The agency with outdoor toilet areas shall provide facilities which allow for individual privacy.
   b. Toilet areas shall be constructed, located and maintained so as to prevent any nuisance or public health hazard. Facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner as prescribed by the Department of Health Services in A.A.C. R9-8-301 through R9-3-308, and the Department of Environmental Quality in 18 A.A.C. 8, Article 6.
   c. Toilet areas which do not have plumbing shall be located at least 75 feet from but within 300 feet of any living or sleeping area, or both, and shall be located at least 100 feet from any lake, stream, or water supply.
   d. Toilets, outhouses, or portable shacks shall be adequate in number based on one seat for every 10 children in care.
      i. There shall be a minimum of two seats if there are more than five children.
      ii. If the agency serves physically disabled children, toilet facilities shall provide one seat for every eight persons.
   e. Toilet facilities shall be well ventilated, allow for air circulation, be screened and periodically treated to deter insects, and be in good repair. An adequate supply of toilet paper shall be provided.
   f. Toilets, outhouses, and portable shacks shall be cleaned and disinfected at least daily. Portable shacks shall be dumped daily in an approved dump station.
   g. Toilet seats shall be constructed of nonporous materials. Wood is not acceptable.
   h. Handwashing facilities shall be adjacent to the toilet area and shall be separate and apart from sinks and areas used for food preparation or washing pots, pans, kitchen, and eating utensils. Individual soaps and hand-drying devices shall be available.
4. Food preparation and serving

a. Menus. Menus shall be planned at least one week in advance and shall then be dated, posted, and kept on file for one year.
b. Food
   i. All food and drink shall be stored to prevent spoilage. Only the foods which can be maintained in a wholesome condition with the equipment available shall be used.
   ii. All milk and milk products utilized by the agency shall be obtained from sources approved by the State Department of Health Services.
   iii. Only pasteurized milk and U.S. Government-inspected meat shall be served to the children. Powdered milk may only be used for cooking or when no refrigeration is available on a wilderness trip.
   iv. Spoiled or contaminated foods shall not be used.
   v. Raw fruits and vegetables shall be washed before use.
c. Preparation
   i. All persons handling food shall wear clean outer garments and keep their hands and fingernails clean at all times while handling food, drink, utensils, or equipment.
   ii. Smoking in the food preparation area is prohibited.
   iii. Handwashing areas, including water, soap, and approved sanitary towels or other approved hand-drying devices, shall be provided adjacent to food preparation areas.
   iv. Areas in which food and drink are stored, prepared or served, or in which utensils are washed, shall be rodent proof, rodent free, and rubbish free. They shall be cleaned after the serving of each meal. Any floors, walls, shelves, tables, utensils, and equipment in these areas shall be of such construction as to be easily cleaned, and shall be well lighted and ventilated.
   v. All food preparation and service shall comply with applicable Department of Health Services food service rules in 9 A.A.C. 8, Article 1.
   vi. No dish, receptacle, or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, or broken.
   vii. Prepared food shall be maintained at temperatures below 45° F or above 140° F; leftovers shall be reheated to 165° F.
d. Serving
   i. Meal time shall be structured to make it a pleasant experience with sufficient time allowed for the children to eat at a reasonable, leisurely rate.
   ii. Normal conversation shall be allowed and encouraged during meals.
e. Dish and utensil washing
   i. Disposable or single-use dishes, utensils, receptacles or towels used in handling or preparing food shall be discarded after one use.
   ii. Non-disposable food service dishes and utensils shall be cleaned and disinfected after each use in accordance with the following:
      (1) A three-compartment sink or vat shall be used. Dishes and utensils shall be thoroughly scraped, washed with soap or detergent in hot water, kept clean, then rinsed free of detergents in clear water and then immersed for a period of at least two minutes in a warm or hot chlorine solution containing at no time less than 50 parts per million of available chlorine or such other solution as may be approved by the state or local health authority.
      (2) Sinks shall be large enough to thoroughly immerse pots and pans.
      (3) Dish towels shall not be used.
      (4) Dishes and utensils shall be air dried. Drain boards shall be provided for draining dishes and utensils.

D. Equipment
1. Tools. Power tools, garden tools, and repair equipment shall be kept in a locked area and used by children only under adult supervision.
2. Protective clothing/equipment. Appropriate protective clothing/equipment shall be provided to children by the agency, when children are participating in potentially hazardous activities.
3. Program equipment
   a. The agency shall use program equipment that is maintained in good repair, stored in such a manner as to safeguard the effectiveness of the equipment, and is given a complete safety check periodically and immediately prior to each use. Equipment shall be discarded after a period of time designated by the manufacturer.
   b. The agency shall use program equipment appropriate to the age, size, and ability of each child in the activity.

E. Storage. The agency shall provide sufficient and appropriate storage facilities.
1. Toxic substances
   a. The agency shall have securely locked storage spaces for all harmful materials. The keys to such storage spaces shall be available only to authorized staff members.
   b. House and garden insecticides and other poisonous materials and all corrosive materials shall be kept in locked storage out of reach of children. Such storage shall not be in or near kitchen or food preparation or storage areas.
   c. The agency shall have only those poisonous or toxic materials needed to maintain the program.
2. Drugs
   a. A special cabinet shall be designated for medicine only. The medicine cabinet shall be kept locked and periodically cleaned. All outdated medications and those prescribed for past illnesses or for children discharged from the agency shall be destroyed.
   b. All prescription medicines, drugs, etc., requiring refrigeration shall be marked with the required temperature range and stored in a refrigerator with a thermometer separate from food items and maintained under temperature ranges recommended by the manufacturer.
3. Flammable materials. Flammable liquids and gases shall be stored in metal containers only. The storage area must be separated from the rest of the living/program area.
4. Food
   a. All food and drink shall be stored so as to be protected from dust, flies, vermin, rodents, and other

contamination. No live animals shall be allowed in any area in which food or drink is stored.

b. Food and nontoxic cleaning supplies must be stored separately. Clean dishes and utensils shall be stored on properly covered shelves or in containers which are cleaned once a week with a chlorine solution (1 tablespoon of bleach to one gallon of water or an acceptable equivalent).

c. All perishable food items shall be kept refrigerated except during the time of preparation and service.

d. The temperature of refrigerated food must be maintained within a range from 38°F to 45°F.

e. A thermometer shall be located in each refrigerator, including ice boxes and ice chests, as well as electric or gas refrigerators. Where ice and ice boxes or chests are used, adequate ice shall be provided, meats and other highly perishable foods shall not be stored over 24 hours and ice chests shall be drained to prevent accumulation of water from melted ice.

F. Water

1. Approved source. The agency must have a sufficient water supply which is potable and from an approved source or purified for drinking, brushing teeth, and cooking.
2. Water purification. Water purification tablets or other means of disinfecting water shall be available at all times. The agency shall have a written policy on effective purification methods to be employed according to the water sources utilized and possible types of contamination.
3. Bathing. Warm water facilities shall be planned for and available for each child to bathe at least once a week.
4. Washing and laundering. Personal washing and laundering is not permitted in any body of water. Water used for these purposes shall be taken in a container from the lake, river or pond, and after use, shall be dumped on land at least 50 yards from the water source.
5. Drinking water
   a. Cool, potable drinking water shall be available for all children at all times.
   b. The use of a common drinking utensil is prohibited.

G. Sanitation

1. Health and Environmental requirements
   a. The disposal of sewage, garbage, and other wastes shall be done in accordance with local health and applicable state requirements, as provided in 18 A.A.C. 8, Article 6 and 18 A.A.C. 9, Article 8.
   b. The agency shall obtain sanitation inspections of mobile kitchens or mobile toilet facilities, or both, prior to each trip by state or county authorities. Written reports of the sanitary inspections shall be kept on file at the agency. The agency shall meet all local, state, and federal health rules and regulations.
2. Garbage and rubbish
   a. Garbage and rubbish shall be stored securely in durable, noncombustible, leakproof, non-absorbent containers covered with tight-fitting lids. Such containers shall be provided with a waterproof liner or thoroughly cleaned after each emptying.
   b. Garbage and rubbish storage shall be separate from living/sleeping areas.
   c. Garbage, rubbish and other solid wastes shall be disposed of twice weekly at an approved sanitary landfill or similar disposal facility. In areas where no facilities are immediately available, solid wastes shall be packed out or disposed of in a manner in accordance with the regulations governing the area.
3. Sewage and wastes
   a. Sewage and other liquid wastes shall be disposed of in a public sewage system or, in the absence thereof, in a manner approved by the local health authority.
   b. Where possible, adequate and safe sewage facilities with flush toilets shall be provided.
4. Insects and rodents. Methods utilized in control of insects and rodents shall be used in a safe, cautious manner to avoid poisonous or toxic contamination to human beings.

H. Safety

1. Emergency procedures
   a. The agency shall have and follow written procedures for staff and children in case of emergency. These procedures shall be developed with the assistance of qualified fire, safety, and rescue personnel and shall include provisions for the evacuation of all program areas and assignment of staff.
   b. The agency shall train staff and children to report fires and other emergencies appropriately. Children and staff shall be trained in fire prevention.
   c. The agency shall conduct emergency drills which shall include actual evacuation of children to safe areas at least monthly. The agency shall provide training for personnel on all shifts in performing assigned tasks during emergencies and making personnel familiar with the use of agency fire-fighting equipment.
      i. Emergency drills shall be held at unexpected times and under varying conditions to simulate the possible conditions of fire or other disasters.
      ii. All persons in the program area shall participate in emergency drills.
      iii. A record of such emergency drills shall be maintained.
      iv. The agency shall make special provisions for the evacuation of any physically handicapped children in the program.
      v. The agency shall help emotionally disturbed or perceptually handicapped children understand the nature of such drills.
2. General program safety
   a. The agency shall have written operating procedures, safety regulations, and emergency procedures for special program activities in which children participate, including aquatics, diving, lifesaving, instructional swimming, recreational swimming, water skiing, skin diving, scuba diving, boating, canoeing, rowing, sailing, crafts, bicycling, farming, horseback riding, mountaineering, rock climbing, rappelling, caving, outdoor living skills, physical fitness, snow and ice activities, archery, gymnastics, riflery, contact sports, backpacking, expedition travel, and animal handling.
   b. The agency shall provide the written operating procedures, safety regulations, and emergency procedures to the Department licensing staff for review and approval.
   c. All children and staff shall receive instruction in the safe and proper use of all equipment and animals to be used by the program.
   d. All children and staff shall be oriented as to safety regulations, emergency procedures and transportation to emergency facilities and/or personnel.
3. Electrical

a. Electrical wiring and electrical appliances shall be installed in accordance with the Arizona State Fire Code at A.A.C. R4-36-201.
b. Electrical wires extending over activity areas shall be fully insulated and located at least 12 feet above the activity area.
c. All exposed wiring shall be fully insulated.

4. Gas appliances
a. The installation of gas appliances for lighting, cooking, space heating, and water heating shall conform to state and local codes. Where no code applies, the provisions of A.R.S. §§ 36-1621 through 36-1626, together with the standards for the installation of gas appliances and gas piping, shall be followed.
b. All unused gas outlets shall have the valves removed and shall be capped off with a standard pipe cap.
c. Gasoline shall not be used for lighting, cooking, or heating.

5. Fire safety equipment
a. Portable fire extinguishers shall be available and maintained for emergency fire protection. The number and type shall depend on the area to be protected.
b. All fire extinguishers shall be inspected at least monthly by staff members for proper location and to determine whether they are accessible, fully charged, and operable.
c. All fire extinguishers shall be inspected by an authorized fire extinguisher company at least once a year from the date of last charge and recharged immediately after use, or as otherwise necessary, showing the date of charging and the agency or company performing the work.
d. A dependable method of sounding a fire alarm shall be maintained in every agency area where children are located.
e. A written fire evacuation plan shall be posted.

I. Water safety

1. Water activities supervision
a. A water activities program operated by the agency shall at all times be under the immediate supervision of a person holding current certification as a Red Cross Water Safety Instructor, a YMCA Instructor in swimming and life saving, or an Aquatic Instructor Boy Scouts of America. A water-activities program includes recreational and instructional swimming in a pool, on a beach, or other approved water areas, rowing, canoeing, sailing, boating, water skiing, snorkeling and scuba diving.
b. The water activities supervisor shall provide pre-service training programs for participating children, supervise qualified lifeguards for water activities and maintain water activities equipment in safe working order.
c. There shall be a minimum of one guard currently certified in Red Cross Advanced Lifesaving, YMCA Lifesaving, or a Lifeguard Boy Scouts of America on duty for each 25 persons in or on the water, and in addition one staff member directly watching every 10 or less persons in or on the water.

2. Swimming procedures
a. American Red Cross, YMCA, or Boy Scouts of America tests shall be used to determine each child's swimming ability. Children shall be confined to an area equal to the limits of their swimming skills or an area requiring lesser skills for which they have been classified.
b. A method of supervising and checking bathers shall be established and enforced. The system used shall be supervised during swimming periods by a member of the aquatics staff and checks shall be conducted not less than every 10 minutes. A written "lost swimmer" plan shall be established and all staff shall know exactly what their duties are in case of an emergency.
c. Children shall swim only in areas designated by the water activities supervisor as safe.
d. Swimming is prohibited during the hours of darkness except in lighted pools.

3. Swimming areas
a. A swimming area shall be maintained in a clean and safe condition, free from holes, sharp edges, and hidden dangers. The agency shall post notice of any known hazard in the vicinity and shall properly safeguard children.
b. The swimming area shall have a delineation of areas for non-swimmers, intermediates, and swimmers in accordance with the standards of the American Red Cross, YMCA, Boy Scouts of America.
c. Lifesaving equipment shall be provided at a swimming area and placed so it is immediately available in case of an emergency. The equipment shall be kept in good working order and include a bell or whistle, two assist poles, and a ring buoy.
d. The water of a natural swimming area shall be free from contamination by garbage, refuse, sewage pollution, or foreign material.

4. Watercraft and water-skiing
a. Any watercraft activities shall be conducted during daylight hours and supervised by the aquatics program instructor. A U.S. Coast Guard-approved life preserver shall be provided for each occupant of a watercraft. A non-swimmer shall wear a vest-type Coast Guard-approved life preserver and not be permitted in a watercraft unless accompanied by a staff member. A child shall wear a vest-type Coast Guard-approved life preserver before entering and while in white water or on a lake when the water is rough or while water-skiing.
b. During a watercraft activity period, a lifeguard shall patrol the watercraft area in a lifeboat. A watercraft docking area shall not be in the swimming area.
c. The swimming area shall not be used for the launching or stopping of water-skiers.
d. The agency which requires or permits children to use watercraft shall have special coverage for such activities included in the agency's liability insurance.

J. Communications. The agency shall have a plan for emergency communication and communication equipment available with each mobile program unit, which may include:

1. Telephone in camp units and outposts;
2. Two-way radio or walkie-talkie;
3. Knowledge of phone or radio locations on backpack, horseback, canoe or car trips, such as Ranger stations in remote areas;
4. Simple code by flag, smoke, or mirror or other means if planned in advance.

K. Transportation

1. Vehicles

a. The agency shall provide or arrange transportation necessary for implementing the child's service plan.
b. Vehicles used in transporting children in care of the agency shall be licensed and inspected in accordance with Arizona state law.
c. Vehicles used for the transportation of children shall be maintained in a safe condition and be equipped in a fashion appropriate for the season.
d. The agency shall maintain written evidence that all vehicles owned, leased, borrowed, or rented by the agency to transport children are serviced regularly and maintained safely.
e. Vehicles used for the transportation of children shall be equipped with a first-aid kit and emergency accessories including tools, a fire extinguisher and flares or reflectors.
f. The agency shall not allow the number of persons in any vehicle used to transport children to exceed the number of available seats in the vehicle.
g. The agency shall not transport children in open truck beds or in trailers.
h. The agency shall ensure that any vehicle used to transport children has the following minimum amounts of liability insurance:
Injury per person: $300,000
Injury per accident: $1,000,000

2. Drivers
a. Any person transporting children in care of the agency shall be licensed to operate that class of vehicle according to Arizona state law.
b. The agency shall provide adequate supervision in any vehicle used by the agency to transport children in care.
c. The agency shall ascertain the nature of any need or problem of a child which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness, or a disability. The agency shall communicate such information to the operator of any vehicle transporting children in care.
3. Transportation of nonambulatory children. The following additional arrangements are required for agencies serving handicapped, nonambulatory children.
a. A ramp device to permit entry and exit of a child from the vehicle must be provided for all vehicles except automobiles used to transport physically handicapped children. A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.
b. In all land vehicles except automobiles, wheelchairs shall be securely fastened to the floor.
c. In all land vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.
4. Emergency transportation
a. The agency shall have means of transporting children in cases of emergency.
b. The agency shall have a written plan for transportation of injured persons to emergency medical services.

L. Animals
1. Safety. The agency shall be responsible for the care and behavior of pets or any animals allowed or used in the program. Animals shall have had necessary rabies shots.
2. Insurance. The agency which requires or permits children to ride horses or other domesticated animals shall have specific coverage for such activities included in the agency's liability insurance.
3. Sanitation. A temporary, shelter, corral, tie-rail, or hitching post shall be located beyond 50 feet of an area where food is prepared, cooked, or served. Fly repellents and daily removal of manure shall be used to prevent such a location from becoming an attraction for or breeding place for flies.

Historical Note
Renumbered from R6-5-7308 and amended effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

Appendix 1.

FACTOR	INDICIA OF A BEHAVIORAL HEALTH AGENCY	INDICIA OF A CHILD WELFARE AGENCY
1. Primary purpose	To provide mental health treatment	To provide a safe & healthy living environment
2. Accreditation	JCAHO; COA; CARF	COA; Never JCAHO for this specific facility seeking licensure
3. Nursing Services	Integrated into services	Occasional use
4. On-campus educational services	Primarily seriously emotionally disturbed (SED); occasional regular education	Primarily regular education & learning disabilities; occasional SED
5. Population served	Described as psychiatrically disordered; seriously emotionally disturbed; psychologically disturbed	Described as behavior disordered, delinquent, dependent, neglected, undersocialized

6. Self-description	Behavioral Health Program Psychiatric Facility Psychosocial orientation	Child Welfare Agency; Social Services Agency; Educational orientation; Re-education
7. Primary source of referrals	Psychologists; psychiatrists; Insurance companies; CHAMPUS; RBHA's	DES; Juvenile courts; Juvenile Corrections; RBHA's as transition or with wrap-around
8. Counseling, psychological, psychiatric services	Routinely provided to all clients	Provided only on an "as-needed" basis
9. Location of behavioral health services	Within the program	Usually in office of contracted practitioner
10. Behavioral health practitioners	Employees or contractors	Usually contracted services; may be contractor from another program or agency
11. Case work services	Social workers, if any, are only part of professional staff	Social workers are primary part of professional staff
12. Staff titles; direct care workers	Behavioral health technicians; psychiatric technicians; psychiatric nurses	House parents; child care workers; teaching parents

Historical Note

Appendix 1 adopted effective July 1, 1997; filed with the Secretary of State's Office May 15, 1997 (Supp. 97-2).

ARTICLE 75. APPEAL AND HEARING PROCEDURES FOR ADVERSE ACTION AGAINST FAMILY FOSTER HOMES, ADOPTION AGENCIES, FAMILY CHILD CARE HOME PROVIDERS, AND PERSONS LISTED ON THE CHILD CARE RESOURCE AND REFERRAL SYSTEM

R6-5-7501. Definitions

The following definitions apply in this Article.

1. "Adverse action" means:
   a. Denial, suspension, or revocation of a child care provider's certification, an adoption agency license, or a foster home license; and
   b. Exclusion from the child care resource and referral system described in A.R.S. § 41-1967.
2. "Administration" means the Department organizational unit responsible for taking adverse action which is the subject of an appeal. "Administration" includes the Division of Children, Youth, and Families and the Child Care Administration.
3. "Adoption agency" has the meaning ascribed to "agency" in A.R.S. § 8-101(2).
4. "Appeals Board" means the Department's independent, quasi-judicial, administrative appellate body, established under A.R.S. § 23-672, and authorized to review administrative decisions issued by hearing officers as prescribed in A.R.S. § 41-1992(D).
5. "Appellant" means a person who seeks a hearing with the Office of Appeals to challenge adverse action taken by the Department.
6. "Child Care Administration" means the administrative unit within the Department which is responsible for certification and supervision of family child care home providers and administration of the Child Care Resource and Referral System.
7. "Child Care Resource and Referral System," which is sometimes referred to as "CCR&R," means the child care provider information system which the Department administers under A.R.S. § 41-1967.
8. "Department" means the Arizona Department of Economic Security.
9. "Division of Children, Youth, and Families" means the administrative unit in the Department responsible for licensing foster homes and adoption agencies.
10. "Family child care home provider" has the meaning prescribed in R6-5-5201(29).
11. "Foster parent" has the meaning prescribed in A.R.S. § 8-501(A)(5).
12. "Hearing officer" means an individual appointed by the Department Director under A.R.S. § 41-1992(A) to conduct hearings when an appellant challenges adverse action.
13. "Licensee" means a person:
    a. Applying for a license as, or currently licensed as, a foster parent or an adoption agency;
    b. Applying for certification as, or certified as, a family child care home provider; or
    c. Listed on the Child Care Resource and Referral System.
14. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body which includes hearing officers appointed under A.R.S. § 41-1992(A).

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6706. Expired

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Amended by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6707. Expired

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Amended by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6708. Expired

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Amended effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6709. Expired

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6709 repealed, former Section R6-5-6710 renumbered and amended as Section R6-5-6709 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6710. Expired

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6710 renumbered and amended as Section R6-5-6709, former Section R6-5-6711 renumbered and amended as Section R6-5-6710 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6711. Expired

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Former Section R6-5-6711 renumbered and amended as Section R6-5-6710, former Section R6-5-6713 renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3). Section repealed; new Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6712. Expired

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Repealed effective June 19, 1979 (Supp. 79-3). New Section made by final rulemaking at 18 A.A.R. 1449, effective August 6, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-6713. Renumbered

Historical Note
Adopted effective May 17, 1976 (Supp. 76-3). Renumbered and amended as Section R6-5-6711 effective June 19, 1979 (Supp. 79-3).

ARTICLE 68. REPEALED

R6-5-6801. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6802. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6803. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6804. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6805. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6806. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6807. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

R6-5-6808. Repealed

Historical Note
Adopted effective May 26, 1977 (Supp. 77-3). Repealed effective June 5, 1997 (Supp. 97-2).

ARTICLE 69. CHILD PLACING AGENCY LICENSING STANDARDS

R6-5-6901. Objectives

The objective of this Article is to establish licensing and operating standards to promote quality services for children and unmarried mothers whose needs are not adequately met in their family homes.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6902. Authority
A.R.S. §§ 8-501 through 8-520 and 46-134.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6903. Definitions
A. "Adult." Any person 18 years of age or older.
B. "Authorized representative." A designated employee of the Department.
C. "Casework supervisor." A person who holds a Bachelor's degree from a university or college and has at least three years of casework experience in a certified or licensed family/child welfare agency.
D. "Caseworker." A person who holds a Bachelor's degree from a university or college and who has training and/or experience in the field of behavioral science.
E. "Child." Any person under 18 years of age.
F. "Child placing agency." A child welfare agency which is authorized in its license to place children.
G. "Department." The Arizona State Department of Economic Security.
H. "Division." The Arizona State Department of Economic Security.
I. "Executive Director." The person responsible for overall administration of the child placing agency; also referred to as Administrator, or Director.
J. "Foster care." A social service which, for a planned period, provides substitute care for a child when its own family cannot care for it for a temporary or extended period of time. Foster care may be in a private family home or a group home.
K. "Foster child." A child placed in a foster home or child welfare agency.
L. "Foster home." A home maintained by an individual or individuals having the care or control of children, other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals (A.R.S. § 8-501(4)).
M. "License." The legal authorization to operate a child placing agency issued by the Arizona Department of Economic Security.
N. "Licensed medical practitioner." Any physician or surgeon licensed under the laws of this State to practice medicine pursuant to Title 32, Chapter 13 and 17 (A.R.S. § 36-501(4)).
O. "Licensing." Includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
P. "Parent or parents." The natural or adoptive parent or parents of the child.
Q. "Provisional license." A temporary license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security for a period not to exceed six months; a provisional license is issued to an agency that is temporarily unable to conform to all licensing standards and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of a child and the agency agrees to correct the deficiency or deficiencies, and where there is a demonstrated need for the services. A provisional license is not renewable.
R. "Receiving foster home." A licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition which is designated as a receiving foster home and it is licensed.
S. "Regular foster home." A licensed foster home suitable for placement of not more than five minor children.
T. "Regular license." A license to operate a Child Placing Agency, issued by the Arizona Department of Economic Security; a regular license which may be issued following a provisional license is valid for one year from the date of issuance and must be renewed annually.
U. "Social worker." A person who holds a Master of Social Work degree from an accredited school of social work.
V. "Special foster home." A licensed foster home capable of handling not more than five minor children who require special care for physical, mental or emotional reasons or have been adjudicated a delinquent (A.R.S. § 8-501(10)).

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6904. Licensing Requirements
A. Consultation. Individuals, association, institutions or corporations considering the establishment of a Child Placing Agency shall consult the Social Services Bureau of the department about such plans:
1. Before a specific program is developed;
2. Before filing a petition for corporation; and
3. Before an application is filed.

B. Application. Individuals, associations, institutions or corporations shall make written application to the Department for a Child Placing Agency license.
C. Fingerprints
1. All members of the Child Placing Agency staff having contact with the foster children must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
2. A license for a Child Placing Agency will not be issued, or will be revoked, if any staff member, having contact with foster children has ever been convicted of a sex offense, has been involved in child abuse, child neglect, selling narcotics, or contributing to the delinquency of a minor, or has a substantial criminal record.

D. Demonstration of need for services in the community. Evidence of need shall consist of:
1. Communication from community leaders in the field of child welfare indicating a need for the services proposed by the applicant or
2. Recent research data establishing a need for the services being proposed by the applicant.

E. Licensing study
1. A study will be made as required by A.R.S. § 8-505(C) by an authorized representative of the Department to evaluate the potential and actual ability of the Child Placing Agency to provide services to children according to the Standards prescribed in this Article.
2. To obtain this information, the authorized representative of the Department must make at least one visit to evaluate the agency setting and interview the Director and staff.
3. In addition, the authorized representative of the Department shall review documentary evidence provided by the Executive Director of the Child Placing Agency regarding agency operation and services to be provided.

F. Provisional license
1. A provisional license shall be issued to any Child Placing Agency that is temporarily unable to conform to all licensing standards, and where the deficiencies are minor, correctable and not potentially injurious to the safety or welfare of the children served, and where the agency

agrees to correct the deficiencies, and where there is a demonstrated need for the services.
2. A provisional license is valid for up to six months and may not be renewed.
3. Prior to the expiration of the provisional license, a review of Standards will be conducted by the Department to determine eligibility for regular licensing. The Child Placing Agency must meet all licensing standards for the issuance of a regular license.

G. Regular license
1. The license is valid for one year from the date of issuance and must be renewed annually.
2. Each license shall state in general terms the kind of child welfare services the licensee is authorized to undertake; and the number of children that can be received or placed and supervised in foster homes, their ages and sex, and the geographical area the agency is equipped to serve (A.R.S. § 8-505(D)).

H. Supervision by the Department. The Department shall provide training, consultation and technical assistance to Child Placing Agencies.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6905. Denial, Suspension, or Revocation of a License

A. The Department shall deny, suspend or revoke any license when:
1. The Child Placing Agency is not in compliance with the licensing standards of the Department, Arizona state or federal statutes, city or county ordinances or codes; or
2. The care and/or services needed by children are not provided.

B. A license that has been suspended can be reinstated by the correction of the deficiency.

C. When a license is revoked, it is necessary to correct the deficiency and make a new application.

D. When an initial application, or an application for a renewal of a license is denied, or a license is revoked or suspended, a written notification of the action shall be forwarded by certified mail to the applicant or licensee.
1. The written notice shall state the reasons for the denial, revocation or suspension with references to applicable statutes, regulations and standards.
2. The Department shall notify the Child Placing Agency of the right to request a hearing within 20 days after receipt of the written notice.
3. The hearing shall be held within ten days of the request, and at that time the applicant or holder shall have the right to present testimony and confront witnesses.
4. When a hearing is requested, the denial, suspension or revocation of the license shall not become final until after the hearing decision is published.
5. The fair hearing process shall be in accordance with A.A.C. Title 6, Chapter 5, Article 24.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6906. License Renewal Requirements

A. Every regular license shall expire one year from the date of issuance and may be renewed annually upon application of the Child Placing Agency.
1. License renewal is not automatic.
2. License renewal requires:
   a. A consultation;
   b. An application;
   c. A written description of services provided; and
   d. Licensing study (see R6-5-6904(E)).
3. For license renewal, each Child Placing Agency must meet all standards for licensing as specified in this Article.

B. An application for the renewal for a Child Placing Agency shall be made in the same manner as the original application. A licensee shall reapply when:
1. The present license will expire within 30 days to 60 days; or
2. There is a plan to move within 30 days from the address on the current license; or
3. There is substantial material change in the program and/or purpose of the Child Placing Agency.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6907. Standards for Licensing and Operating a Child Placing Agency

A. Requirements for the staff of a Child Placing Agency
1. Executive Director. The Agency Board shall select an Executive Director.
   a. If the Executive Director is not directly involved in supervising child placing activities, the Director shall at least have a Bachelor's degree in a field related to social work such as administration, psychology, education or other allied profession, as well as demonstrated satisfactory experience in the area of service provided by the agency.
   b. If the Executive Director directly supervises child placing activities, he shall have a Master's degree in Social Work or at least a Bachelor's degree and a minimum of three years of experience in child welfare services in a certified or licensed family or child welfare agency.
2. Casework supervisor. The casework supervisor shall possess above average ability in casework practice and have knowledge of and skills applicable to casework supervision. The supervisor shall have a Bachelor's degree and at least three years of casework experience in a licensed family or child welfare agency.
3. Social worker. A person shall have a Master of Social Work degree from an accredited school of social work.
4. Caseworker. A caseworker shall have a Bachelor's degree from a university or college and have training and/or experience in the field of behavioral science.
5. Office staff. The agency shall have sufficient clerical services to keep correspondence, records, bookkeeping, and files current and in good order.
6. Consultants
   a. The agency shall have a consulting Licensed Medical Practitioner who makes recommendations as to the medical aspects of the agency program, coordinates medical care for selected children, and advises staff regarding the health problems of specific children.
   b. Psychiatric, psychological and legal consultation and/or services shall be available to the agency.

B. Requirements for the organization of a Child Placing Agency
1. Type of organization. A Child Placing Agency shall be maintained by the state, or a political subdivision thereof, a person, firm, corporation, association, or organization.
2. Incorporation
   a. Incorporated Child Placing Agencies shall provide the Department with a copy of the Articles of Incorporation and Bylaws and the Certificate of Incorpo-

ration issued by the Arizona Corporation Commission.

b. The purpose for which the agency is incorporated shall be stated in its Articles of Incorporation and the agency shall not enter any other fields of service than those provided in its Articles of Incorporation.

3. Board of Directors
   a. All Child Placing agencies shall have a Board of Directors. The Department shall be provided a current list of all Board members, their address and office held.
   b. Persons employed by or who receive compensation from a group care agency (see Title 6, Chapter 5, Article 74) may not be Board members of a Child Placing Agency due to a possible conflict of interest.
   c. The Board of Directors shall:
      i. Assume responsibility, jointly with the Executive Director, for formulating the plans and policies of the Child Placing Agency.
      ii. Keep sufficiently informed through Board meetings and though the reports of its Executive Director and committees to ensure that the agency fulfills all of its functions in the best interest of the children.
      iii. Meet at least quarterly. Its executive committee shall meet as needed.
      iv. Keep minutes of each meeting which shall be made a permanent part of the records of the Child Placing Agency.
      v. Refrain from direct administration or operation of the Child Placing Agency, either through individual members or committees, except in emergencies.
      vi. Select and employ an Executive Director to whom the responsibility for administration of the agency shall be delegated and, when necessary, terminate such employment.
      vii. Require and approve the Child Placing Agency's annual program and financial reports.
   d. The Board of Directors should be composed of adult residents who have a genuine interest in child welfare, concern for social conditions in the community, and reflect equitably the ethnic and economic standing of the population served. The Board members should have sufficient time to discharge their obligations and have a variety of interests, talents and points of view so that no single group or profession will have a controlling voice.
   e. The names, addresses and offices held of all members of the Board of Directors shall be currently filed with the Department. All changes in composition of the Board of Directors or Officers of the Child Placing Agency must be reported to the Department in writing within 30 days of a change.
   f. Provision should be made for replacement of members who become inactive for six months. Terms for Board members shall be overlapping and election of one-third of the Board membership annually is recommended to ensure continuity of policy, as well as the introduction of new and changing points of view. Administrators and staff of the Child Placing Agencies shall not be members of the Board of Directors. Agencies which do not have overlapping terms or which currently have administrators or staff members on their Board of Directors will have one year from the date of issuance of these standards to bring their Board of Directors into compliance.

4. Financing
   a. Requirement for sufficient funding. The agency must furnish evidence that it has sufficient funds to pay all start-up and operating costs through the year of operation for which a license may be issued.
   b. Budget and financial records
      i. Child Placing Agency shall operate on a budget which has been approved by its governing board before the beginning of the fiscal year.
      ii. A Child Placing Agency must maintain financial records of all receipts, disbursements, assets, and liabilities for at least three years. These records should be available for inspection by the Department upon request.
   c. Solicitation of funds from the public. Each Child Placing Agency shall comply with all local and state laws relating to the solicitation of funds.

5. Operations manual. Each agency shall compile an operations manual. It shall be available to all agency staff members, and all staff members shall be familiar with the contents. It shall contain:
   a. The overall philosophy, which guides the agency's services.
   b. A statement of the primary purpose, services, and goals of the agency.
   c. A chart of organizational structure.
   d. The agency's intake policies and procedures.
   e. The manual of the agency's governing board.
   f. The operational procedures, which guide the delivery of the agency's services.
   g. Copies of the agency's forms.

6. Records and reports
   a. Files. Case records and financial records shall be kept in a locked, fire-resistant file. Access to records shall be limited to the staff who have need for the data, and to authorized representatives of the Department.
   b. Case records
      i. The agency shall maintain up-to-date, confidential and well-organized case records. Each child's record should indicate, from the point of admission to discharge, the service plan and the progress of the child.
      ii. Records shall include the current information needed to provide services, make service plans, and evaluate each child.
      iii. The case record should be divided into sections for easy reference, with the material filed under the following headings, as appropriate:
         (1) Intake -- intake study, including referral material from other agencies, court, or referral sources;
         (2) Legal -- specific verified information relative to the status of the child's legal guardianship and custody. Statements, agreements, and consents signed by parent(s) or guardian(s) pertaining to the child's placement, financial responsibility, and other data required for protection of the child;
         (3) Medical -- medical history, including immunizations, physical defects, significant developmental history, illnesses, and hospital care and/or operations. Medical

releases and/or authorizations for treatment or medical care, including the names of medical personnel involved. Records of all prescription medications consumed;
(4) Dental -- date of examinations, etc.;
(5) Psychological -- reports of psychological and/or psychiatric evaluations and examinations;
(6) Progress -- periodic (not less than every three months) evaluation of the child's progress, adjustment, development and future plans and goals.
(7) School -- school records indicating attendance and scholastic achievement;
(8) Correspondence -- letters received or sent concerning the child;
(9) Each record shall have a face sheet listing the following information which shall be kept up-to-date;
(a) Full name of child, including aliases;
(b) Date and place of birth (verified);
(c) Sex;
(d) Religion and race;
(e) Names, addresses of parents and siblings;
(f) Names, addresses and relationships of other responsible persons;
(g) Date referred to the agency;
(h) Date service was terminated;
(i) Other pertinent identifying information.

c. Reports
i. Each agency shall maintain and report accurate statistics on children receiving services, and staff employed, on forms provided for that purpose by the Department. These reports shall include:
(1) Form FC-005, "Foster Child Placement, Replacement and Discharge Central Registry Form," which must be submitted within five working days of the date action is taken.
(2) Form LC-008, "Child Welfare Agency Employee Central Registry," which must be submitted within five days of employment or discharge.
ii. The Child Placing Agency shall report to the Department any planned change of address, change in program, or other change which significantly affects the services provided. The Department shall be notified 30 days prior to any planned changes.

C. Requirements for the personnel of a Child Placing Agency
1. Personnel practices. An agency shall employ an individual only after careful evaluation of the applicant which will include references as to character, skills, knowledge, and experience.
2. Personnel policies. The agency shall maintain a manual of all personnel policies and procedures including job descriptions and all personnel forms. The written statement of personnel policies outlining personnel practices as they affect both employer and employee should include:
a. The conditions of employment and the conditions under which employment may be terminated.
b. Salary scales.
c. Provision for sick leave, time off, and paid vacation.
d. Information regarding employment benefits, such as retirement and insurance plans.
e. Provision for periodic assessment of work performance.
f. Provision for staff development through in-service training.
3. Personnel records
a. A personnel record shall be maintained for each employee. This shall include identifying and qualifying information; such as, references, previous work history and education, date of employment and evaluation.
b. When employees resign, retire, or are discharged, the date and reason for termination shall be recorded.

D. Placement services
1. Foster care
a. Types of homes
i. Boarding Home. A Boarding Home provides temporary or permanent care and compensation to the foster parents for room and board. These Boarding Homes may be either Regular or Special Foster Homes.
ii. Free home. A free home provides temporary or permanent care without compensation other than special needs.
iii. Work and Wage Home
(1) Work and Wage Homes are those in which the child's duties within the home constitute reimbursement for room and board and for which the child may be paid an additional wage. These homes shall be used only as a resource for mature and well adjusted children from 16 to 18 years with good work skills. The Child Placing Agency shall prepare a written statement to be signed by the agency, foster parents and child which will clearly define:
(a) The amount of work required; and
(b) The remuneration the child is to receive and by whom; and
(c) The work schedule which shall permit the child time for school attendance, study, recreation, and other normal activities for a child in this age group.
(2) The Department shall not place adjudicated dependent children in Work and Wage Homes.
b. Foster care placement procedures
i. The agency shall follow the preplacement procedures set forth in A.R.S. § 8-511.
ii. Following the preplacement procedures out lined in A.R.S. § 8-511, if it is determined that the child should be placed in foster care, the agency shall provide appropriate counseling services to the child and his parents to prepare them for the placement.
(1) If the family does not explain the reason for placement and prepare the child for this experience, the representative of the Child Placing Agency should do so.
(2) The representative of the Child Placing Agency should explain the foster home program to the parents.

iii. When a child is placed in foster care, the Child Placing Agency shall comply with the requirements and procedures set forth in A.R.S. § 8-514(B) and (C).

2. Adoption. If authorized in its license to place children for adoption, the agency shall comply with all laws (including but not limited to A.R.S. Title 8, Chapter 1, Article 1) regarding the investigation of potential adoptive parent and the adoption of children. The agency shall comply with the requirements of the following rules of the Department:
   a. Title 6, Chapter 5, Article 65, Adoption Placement;
   b. Title 6, Chapter 5, Article 66, Adoption Study;
   c. Title 6, Chapter 5, Article 67, Adoption Subsidy; and
   d. Title 6, Chapter 6, Article 68, Relinquishment and Severance Services.
3. Parents
   a. When there are social and/or emotional problems regarding the pregnancy, social services shall be given in accordance with the needs of mother during pregnancy and to help her with plans for her rehabilitation after delivery.
   b. Unless inappropriate, the father shall be involved in planning for the mother and child.
   c. Services to unmarried parents may also include establishing paternity and shall include making suitable plans for the child.

E. Supervision
1. The licensed Child Placing Agency shall supervise:
   a. All children placed by the agency in foster homes; and
   b. All foster homes where children are placed by the agency.
2. The licensed Child Placing Agency's representative shall:
   a. Visit Receiving Foster Homes at least once per month;
   b. Visit Regular and Special Foster Homes at least once every three months; and
   c. Prepare written reports of the visits.
3. A Child Placing Agency may allow a child to participate in activities and functions generally accepted as usual or normal for his/her age group. Permission for a child to participate in activities shall be given in accordance with A.R.S. § 8-513.
4. Following the initial placement, the child placed in a setting other than that of his parent's home shall have medical examinations at periodic intervals, and not less than once every year.

F. Foster home studies
1. The study. Child Placing Agencies that wish to submit foster homes for licensing shall conduct an investigation of the foster home, meeting the standards established by the Department in Title 6, Chapter 5, Article 58, Family Foster Home Licensing Standards.
2. Fingerprints. Foster parent applicants and members of the household, 18 years of age or older, must be fingerprinted, and the fingerprints submitted to the Department for a criminal records check.
3. Demonstration of health
   a. The potential foster care application, prior to licensing, shall furnish a report of a physical examination, done within the last six months, demonstrating that the person has good health and is free from any communicable disease.
   b. Prior to licensing, children of the foster care applicant shall have current immunizations as prescribed by the Arizona Department of Health Services.
4. Sanitation inspection. The Child Placing Agency shall request the local or state health department to conduct a sanitation inspection of the prospective foster home prior to licensing.
5. Licensing. If the foster home meets all requirements set by the Department, the Child Placing Agency shall submit an application stating the foster home's qualifications to the Department. The Child Placing Agency may also recommend the types of licensing and certification to be granted to the foster home. The Department shall review the foster home study, and issue a license for the foster home if all licensing standards have been met.
6. License renewal. Foster home license renewal is required annually by the Department.
7. Homes exempt from licensing by the Department. When a child is placed in a home by a means other than by a court order, and when the home receives no compensation from the state or any political subdivision of the state, licensing by the Department is not required.

G. Requirements of physical plant and equipment
1. Offices
   a. There should be sufficient office space for interviewing children and families and for supervisory conferences.
   b. The Child Placing Agency shall comply with any building, health, fire or other codes in effect in the jurisdiction where it is located.
2. Fire protection. All Child Placing Agencies shall have a written fire evacuation plan posted and should conduct fire drills at least every six months.
3. Telephone. There shall be telephone service in the Child Placing Agency.
4. Vehicle(s). The vehicle(s) for transporting children shall be in a safe operating condition and all drivers shall have a current driver's license. Persons who frequently transport children as a part of their employment shall have a chauffeur's license.
5. Insurance
   a. The Child Placing Agency shall provide for insurance coverage for adequate protection against accidents.
   b. Insurance coverage must include liability insurance to cover acts of children or staff, and protection against damages to, or loss of, buildings and other valuable properties.
   c. There shall be liability insurance on all vehicles transporting children.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6908. Confidentiality
The rules and regulations of the Department for securing and using confidential information concerning the client shall be followed. Refer to Title 6, Chapter 5, Article 23, "Safeguarding of Records and Information."

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6909. Civil Rights
The rules of the Department regarding civil rights shall be followed. Refer to Title 6, Chapter 5, Article 26, Civil Rights.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

R6-5-6910. Fair Labor Standards Act
The hiring and compensation policies of the Child Placing Agency shall comply with the Fair Labor Standards Act.

Historical Note
Adopted effective August 31, 1978 (Supp. 78-4).

ARTICLE 70. EXPIRED

R6-5-7001. Expired

Historical Note
Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7002. Expired

Historical Note
Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 8S-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7003. Expired

Historical Note
Adopted as an emergency effective January 21, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed and amended effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7004. Expired

Historical Note
Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed and amended effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7005. Expired

Historical Note
Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 5 A.A.R. 1006, effective March 18, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7006. Expired

Historical Note
Adopted as an emergency effective January 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 85-6). Emergency renewed effective April 1, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-2). Emergency expired. New Section adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23,1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7007. Expired

Historical Note
Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7008. Expired

Historical Note
Adopted as an emergency effective October 17, 1986, pursuant to A.R.S. §§ 41-1003, valid for only 90 days (Supp. 86-5). Emergency expired. Adopted without change as a permanent rule effective January 23, 1987 (Supp. 87-1). Section repealed, new Section adopted effective January 2, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2567, effective March 31, 2016 (Supp. 16-3).

R6-5-7009. Expired

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.

2. Provide transparency by being open and accountable to the public for the actions of the department.

3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.

4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.

5. Adopt rules to implement the purposes of the department and the duties and powers of the director.

6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.

7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.

8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.

9. Administer child welfare activities, including:

(a) Cross-jurisdictional placements pursuant to section 8-548.

(b) Providing the cost of care of:

(i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.

(ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-467. Child welfare licensing fees; fund; uses; trust; definition

A. The department may establish and collect fees from noncontracting licensees for the purpose of licensing and supervising noncontracting licensees. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this subsection in the child welfare licensing fee fund.

B. The child welfare licensing fee fund is established consisting of all fees collected pursuant to subsection A of this section and monies appropriated by the legislature. The department shall administer the fund. Monies in the fund are both of the following:

1. Subject to legislative appropriation.

2. Exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from the investment shall be credited to the fund.

D. Fund monies shall be used to pay the costs incurred by the department for both of the following:

1. The issuance of licenses to noncontracting licensees.

2. The inspection, examination, suspension, denial, revocation or change of licenses of noncontracting licensees pursuant to sections 8-504 and 8-506.01.

E. Any fee that is authorized by law or rule and that is deposited in the fund is held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the state general fund of this state.

F. For the purposes of this section, "noncontracting licensee" means a licensee that does not contract with this state, that contracts with the federal government, that receives only federal monies and that employs individuals who provide direct services to children.

8-502. Foster parent and child welfare agency information; confidentiality; permissible disclosure; use; violation; classification; definitions

A. Unless otherwise provided by law and except as provided in subsection E, F or G of this section, all personal information concerning a foster parent applicant or licensee or an individual who applies for or receives a child welfare agency license is confidential and may not be released, unless the release is ordered by the superior court or provided for by court rule. DCS information is confidential and may be released only as prescribed in section 8-807.

B. Foster parent information is confidential, except the department may release the information prescribed in subsection C of this section if the foster parent's license has been revoked or all of the following apply:

1. No foster children are residing in the home.

2. The department has begun a licensing denial, suspension or revocation action.

3. The foster parent's identity has been made public by sources outside the department.

C. If requested, the department may release the following foster care parent information if permissible under subsection B of this section:

1. The name of the licensee.

2. The dates of current and past licensure.

3. Any training in which the licensee participated.

4. The number, ages and gender of children for which the foster care provider is licensed.

5. Any complaints that do not involve a child safety or an office of child welfare investigations investigation.

6. Any restrictions on the license of the licensee.

D. Child welfare agency information is not confidential, except for both of the following:

1. Any DCS information in the licensing files of the department.

2. The address of any facility where a foster child is placed, even if the address is also the corporate address of the child welfare agency.

E. An employee of the department of child safety, the department of law or a court may obtain the information described in subsection A, B, C or D of this section in the performance of the employee's duties.

F. An employee of the department of child safety, the department of law or a court may release information that is otherwise confidential under this section under any of the following circumstances:

1. To an applicant or licensee if a request is made in writing specifically requesting information that directly relates to the person who requests the information.

2. In oral or written communications involving the provision of services or the referral to services between employees of, persons under contract with or persons holding a general employment relationship with the department of child safety, the department of law or the juvenile court.

3. If the disclosure is necessary to protect against a clear and substantial risk of imminent serious injury to a client of the department of child safety.

4. To an agency of the federal government, this state or another state or any political subdivision of this state for official purposes. Information received by a governmental agency pursuant to this paragraph shall be maintained as confidential unless the information is pertinent to a criminal prosecution.

5. To a foster parent or a parent certified to adopt if the information is necessary to assist in the placement with or care of a child by the foster parent or person certified to adopt.

6. To an officer of the superior court, the department or an agency that is required to perform an investigation pursuant to section 8-105, if the information is pertinent to the investigation. Information received pursuant to this paragraph may be disclosed to the court, but shall otherwise be maintained as confidential.

G. Notwithstanding sections 8-519, 8-541 and 8-542, a standing committee of the legislature or a committee appointed by the president of the senate or the speaker of the house of representatives may obtain information described in subsection A, B, C or D of this section on written request to the director. Information obtained pursuant to this subsection may be used only to conduct investigations related to legislative oversight of the department. Personally identifiable information may not be further disclosed.

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

I. For the purposes of this section:

1. "Child welfare agency information" means all information in the licensing file of the department, including all information on corporate or other entity applicants or licensees and any licensing investigations. Child welfare agency information does not include personal information about individuals who apply for licensure to or are licensed by the department as a child welfare agency.

2. "DCS information" has the same meaning prescribed in section 8-807.

3. "Foster parent information" means all information in the licensing file of the department that is not confidential under any other law. Foster parent information does not include personal information, information that is confidential under another statute or information of a similar nature.

4. "Personal information" means information about an individual that is disclosed by the individual or by a third party on behalf of the individual to obtain or maintain a license. Personal information includes all of the following:

(a) The individual's identity, social security number, address and personal history.

(b) Financial, health or medical information about the individual.

(c) References for the individual.

8-503. Powers and duties

A. The division shall:

1. Exercise supervision over all child welfare agencies.

2. Advise and cooperate with the governing boards of all child welfare agencies.

3. Assist the staffs of all child welfare agencies by giving advice on progressive methods and procedures of child care and improvement of services.

4. Establish rules, regulations and standards for:

(a) Licensing of child welfare agencies.

(b) Licensing of foster homes.

(c) Classifications of foster homes as:

(i) Receiving foster homes.

(ii) Regular foster homes.

(iii) Special classes of foster homes as are needed according to the types of problems involved.

(iv) Group foster homes.

(d) Certifying each foster home according to one or more of the categories prescribed in subdivision (c) of this paragraph.

(e) Initial and ongoing foster parent training programs.

(f) The method of approving foster parent training programs.

(g) Uniform amounts of payment for all foster homes according to certification. However, variations in uniform amounts of payments may be allowed for foster homes based on consideration of geographical location or age or mental or physical condition of a foster child.

(h) Renewal of licenses of child welfare agencies and foster homes.

(i) Form and content of investigations, reports and studies concerning disposition of children and foster home placement.

5. Establish a program of counseling and rehabilitation of parents whose children have been placed in foster homes.

6. Establish foster parent training programs or contract with other agencies, institutions or groups for the provision of training programs to foster parents. Foster parent training programs shall be established in at least the following areas:

(a) Initial and ongoing training as a foster parent for a regular or group foster home.

(b) Initial and ongoing training as a foster parent for a special foster home.

7. Regulate the importation and exportation of children.

8. In conjunction with the department of education and the department of juvenile corrections, develop and implement a uniform budget format to be submitted by licensed child welfare agencies. The budget format shall be developed in such a manner that, at a minimum, residential and educational instructional costs are separate and distinct budgetary items.

9. Establish as a goal that, at any given time, not more than fifty percent of the total number of children whose maintenance is subsidized by title IV, part E of the social security act, as amended, shall be in foster care in excess of twenty-four consecutive months. The division shall establish through regulations appropriate procedures to achieve the goal.

10. Maintain a goal that infants who are taken into custody by the department be placed in a prospective permanent placement within one year after the filing of a dependency petition.

B. Except as provided in section 8-514.01, large group settings for children, group homes for children and child developmental homes that have one or more residents who are clients of the department with developmental disabilities shall be licensed pursuant to title 36, chapter 5.1, article 3. Rules, regulations and standards adopted pursuant to subsection A, paragraph 4 of this section shall not apply to group homes for children or child developmental homes licensed pursuant to title 36, chapter 5.1, article 3.

8-505. Issuance of licenses; application; investigation; renewal

A. The issuance of initial and renewal licenses for child welfare agencies shall be made by the division.

B. A child welfare agency shall not receive any child for care or maintenance or for placement in a foster home unless the agency is licensed by the division. Application for a license shall be made on a form prescribed by the division.

C. The division shall, before issuing a license to an agency, investigate the activities and standards of care of the agency, its financial stability, the character and training of the applicant, the need for such agency, and the adequacy of its intended services to insure the welfare of children. A provisional license may be issued to any agency whose services are needed but which is temporarily unable to conform to the established standards of care. If the applicant meets the standards as established by the division a regular license shall be issued for a period of one year.

D. Each license shall state in general terms the kind of child welfare service the licensee is authorized to undertake, the number of children that can be received if the licensee is a private agency, their ages and sex, and, if authorized to place and supervise children in foster homes, the geographical area the agency is equipped to serve.

E. Every license shall expire one year from the date of issuance, and may be renewed annually on application of the agency, except that provisional licenses may be issued for not more than six months from the date of issuance and may not be renewed.

8-506.01. Denial, suspension, revocation or change of license; child welfare agency; appeal

The division may deny the application or suspend or revoke the license of any child welfare agency for the wilful violation of any provision of this article or for failure to maintain the standards of the care prescribed by the division. Written notice of the grounds of the suspension or the proposed denial or revocation or any other material change in the license status, including provisional status, shall be given to the applicant or holder of the license. Within twenty days after receipt of written notice of a proposed denial, revocation, suspension or change, the applicant or holder may request a hearing in accordance with title 41, chapter 6, article 10. If the hearing is requested it shall be held within ten days of the request, at which time the applicant or holder has the right to subpoena witnesses, present testimony and confront witnesses.

8-519. Records and reports

A. Each child welfare agency shall keep records regarding the children in its care as the division prescribes and shall furnish to the division, on request, such additional information as the division requires.

B. The department shall provide information necessary for foster care review boards to perform their statutory duties through an automated information exchange. The department and the administrative office of the courts on behalf of the state foster care review board shall enter into a data sharing agreement to govern the parameters of the automated information exchange. On the request of a foster care review board, any record pertaining to a case assigned to such board, kept by the division or a child welfare agency, shall be furnished to the board.

C. All records and information in the possession of the foster care review board regarding children and their parents or relatives shall be deemed confidential and shall be disclosed only pursuant to this chapter or by order of court.

D. A child welfare agency shall furnish a report of each placement or withdrawal of each child to the division.

8-520. Violations; classification

Any agency, society, association, institution or person, whether incorporated or unincorporated, and any individual acting for or in its name, which engages in caring for children or children and adults or of placing children for care pursuant to this article, without having first procured a license as a child welfare agency as provided in this article, or which knowingly fails or refuses to report as required by the provisions of this article, or which knowingly obstructs or hinders the division, the department of economic security or the agents of either agency in the inspection or investigation of the agency, societies, associations, institutions or persons under the respective agency's control or charge, or any person knowingly violating any of the other provisions of this article is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this article.

Trevino, Angelica, P (Angie)

From: Maia Zelkind <mzelkind@lambdalegal.org>
Sent: Thursday, February 23, 2023 5:37 PM
To: DCS Rulemaking
Cc: Molly Dunn; Currey Cook
Subject: Written Comment AAC Title 21, Chapter 7, Articles 1 & 2
Attachments: Arizona Notice and Comment AAC Title 21 Ch 7 Articles 1 2 - Final.pdf

Hello,
Please see the attached written comments for the proposed amendments to AAC Title 21, Chapter 7 Child Welfare and Agency Licensing, Article 1 Licensing Requirements for a Child Welfare Agency & Article 2 Residential Group Care Facilities.
Best,
ACLU of Arizona
Children's Action Alliance
Divine Sisters Group Home
Lambda Legal
Beth Rosenberg

Maia Zelkind
Paralegal
Pronouns: She/her/hers
Lambda Legal
120 Wall St., 19th Fl.
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mzelkind@lambdalegal.org

February 23, 2023

Arizona Department of Child Safety
P.O. Box 6030
Phoenix, AZ 85005

Re: Arizona Administrative Code Title 21. Child Safety, Chapter 7. Child Welfare Agency Licensing, Article 1. Licensing Requirements for a Child Welfare Agency and Article 2 Residential Group Care Facilities

Submitted via email – DCSrulemaking@azdcs.gov

Dear Office of Legislative Affairs and Codification:

The undersigned organizations are dedicated to the safety, permanency, and well-being of children in Arizona's child welfare system, including children who are lesbian, gay, bisexual, transgender, queer, or questioning ("LGBTQ+").[1] We respectfully submit to Arizona Department of Child Safety ("DCS") the following recommendations for the revision of the Arizona Administrative Code Title 21. Child Safety, Chapter 7. Department of Child Safety – Child Welfare Agency Licensing, Article 1. Licensing Requirements for a Child Welfare Agency, and Article 2. Residential Group Care Facilities. We appreciate and support DCS's proposal to include revisions requiring training for child welfare agency staff on how to support LGBTQ youth in R21-7-132. In addition, the proposed revisions in R21-7-227 acknowledging the importance of respect for all aspects of a child's identity, including sexual orientation, gender identity, and gender expression as well as a prohibition against derogatory remarks toward a child about any aspect of their identity are critical to ensure children are not harmed while in residential group care facilities. Here we offer suggested amendments to further strengthen and align these articles with DCS practice guidelines and regulation;[2] federal law and policy guidance from the Administration for Children & Families ("ACF");[3] and child welfare professional standards.[4]

[1] We use the abbreviation LGBTQ+ here, apart from where LGBT or LGBTQ is used in cited materials, to be inclusive of all the ways a youth may identify, including identities that are not included explicitly within the abbreviation LGBTQ. For example, some Native American youth may use the term "two-spirit" or a youth who does not identify as exclusively male or female may use the term "nonbinary."

[2] Office of Licensing and Regulation, LGBTQ+ Policy (Ch. 15, Sec 39) "All children, regardless of gender identity, gender expression, or sexual orientation, have the right to feel safe and be safe in their living arrangement to achieve positive outcomes…" *available at* https://extranet.azdcs.gov/DCSPolicy/Content/Adminstrative%20Policy/DCS%2015/DCS%2015-39%20LGBTQ%20Policy.pdf (note the policy, as original transmitted, included sexual orientation and gender identity as protected classes); Caregiver Selection Protocols (Ch. 19, Sec 3) "The Department shall make diligent efforts to assign transgender and gender diverse individuals to a living arrangement that conforms with their affirmed gender identity, which may or may not be consistent with the sex marker on the child's birth certificate," *available at* https://extranet.azdcs.gov/DCSPolicy/Content/Adminstrative-%20Policy/DCS%2019/DCS%2019-03%20Caregiver%20Selection%20Protocols.pdf; Ariz. Admin. Code R21-6-321 *Rights of Foster Child*, "In addition, a foster child has the right to: … 2. Be free to express their gender identity and sexual orientation…"; Ariz. Admin. Code R21-6-201 *Minimum Qualifications for an Applicant*, "The licensing agency shall ensure the right of any individual or married couple to apply for a foster home license, regardless of gender, race, religion, political affiliation, national origin, disability, or sexual orientation, if the applicant meets the minimum qualifications specified under Chapter 6 of this Title."

[3] Bryan Samuels, Comm'r, Admin. for Children & Families, *Info. Memorandum ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011) , *available at* https://www.acf.hhs.gov/sites/default-/files/cb/im1103.pdf [hereinafter "*Info. Memorandum ACYF-CB-IM-11-03*"]; *Info. Memorandum ACYF-CB-IM-22-01*, *available at* https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201.pdf.

[4] *See* Child Welfare League of America, et al., *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings* (2012) , *available at* https://www.lambdalegal.org/sites/default/files/publications/downloads/ recommended-practices-youth.pdf [hereinafter "*Recommended Practices*"]; Brief of Amici Curiae Am. Acad. of Pediatrics, Am. Psychiatric Ass'n, Am. College of Physicians & 17 Additional Medical & Mental Health Orgs. in Support of Respondent, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 136 S. Ct.

Please find our recommendations for additional language to include in R21-7-101- 240 ("the articles") in the attached document. New proposed language is in bold italics and underlined. Language we recommend deleting is struck through. These proposed amendments help ensure that Child Welfare Agencies and Residential Group Care Facilities support and affirm children in all aspects of their identity, including sexual orientation, gender identity, and gender expression; training is provided regarding the experiences and needs of LGBTQ+ children; children in care are not discriminated against or harassed on account of any aspect of their identity or ability; and that no child is subjected to harmful and ineffective attempts to change their sexual orientation or gender identity, among other items. At their core, these changes aim to ensure that children are protected from conduct harmful to their safety and wellbeing and agencies and facilities are better equipped to support all children and youth, so they are healthy and thrive.

Our proposed amendments are essential to ensure the safety, permanency, and well-being of children in Arizona's child welfare system for the following reasons:

1) **Clear, explicit nondiscrimination protections promote safety and prevent harm to children, set clear expectations for agency staff and for children, and promote accountability**

All children in Arizona's child welfare system should expect the same experience and be afforded the same protections while receiving care and services and participating in programs regardless of their identity, expression, or ability. Explicit, specific guidance in licensing requirements for child welfare agencies and group care facilities sets clear expectations for professionals working in the system on behalf of children. Clear expectations allow children in care to understand what to expect and allow them and other system professions to hold systems meant to help them accountable. As such, it is imperative that the licensing provisions set standards and provide necessary guidance that covers the general operations of child welfare agencies and their staff and care provided to children in residential group care facilities. The agencies and facilities serve all children in care, including those who have aspects of their identities that fall into minority categories in society and, thus, make them more vulnerable to harassment, mistreatment, and discrimination. Providing services and programs, including residential care, in an inclusive and nondiscriminatory manner and requiring training to support staff in their ability to provide that care is a core requirement of any child welfare system that treats children with dignity and respect.

In that same vein, our suggested amendments to the articles strengthen necessary protections for LGBTQ+ youth in care. Too often LGBTQ+ youth in care have already experienced rejection by their family of origin or others in their community, which may have contributed to them entering the child welfare system. To avoid additional trauma, it is imperative that children are not subjected to additional harm or attempts to change or discourage them from being who they are. Further, our proposed amendments assure transgender and nonbinary children have their identity respected and receive necessary, supportive care.

Together, DCS's proposed amendments to the articles and the attached proposed changes and additions, will ensure the safety, health, and wellbeing of all children in care.

2442 (2016), *available at* https://www.aclu.org/legal-document/gloucester-county-school-board-v-gg-american-academy-pediatrics-et-al [hereinafter "Brief of Amici Curiae Am. Acad. of Pediatrics et. al, *Gloucester Cty. Sch. Bd*"].

2) Arizona child welfare law should be consistent with federal law and policy to ensure safety and wellbeing and promote permanency.

Federal constitutional and statutory law protect the rights of all youth in the child welfare system, including LGBTQ+ youth. Youth in care have substantive due process rights under the Fourteenth Amendment, which protect their personal security and reasonably safe living conditions; freedom from psychological harm and from physical and psychological deterioration; and adequate care including the provision of certain services and a reasonably suitable placement.[5] In addition, Titles IV-E and IV-B of the Social Security Act, require agencies receiving federal funds for child welfare services to place children in "a safe setting that is the least restrictive (most family like) and most appropriate setting availability and in close proximity to the parents' home, consistent with the best interest and special needs of the child[.]"[6] Further, the federal Health and Human Services Grants Rule ("HHS Grants Rule") provides that "no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of Department of Health and Human Services ("HHS") programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation."[7]

On March 2, 2022, the Administration on Children, Youth and Families ("ACYF") issued an information memorandum to state child welfare agencies regarding LGBTQ+ youth in foster care.[8]
The purpose of the memorandum is to provide guidance for agencies "supporting and affirming LGBTQI+ children and youth in foster care … through both a programmatic and an equity lens" and "addressing needs that a child or youth may have as a result of their sexual orientation, gender identity, or gender expression."[9] ACYF "recognizes that a safe and appropriate placement setting is one in which a child or youth's LGBTQI+ identity is supported and affirmed, and their individualized needs are considered and addressed, including those related to being LGBTQI+."[10] ACYF also plainly stated that a placement where "conversion therapy," or "other attempt to undermine, suppress or change the sexual orientation or gender identity of a youth in care is neither safe nor appropriate."[11] In addition to guidance surrounding training requirements and providing resources, "Children's Bureau also strongly encourages agencies to focus attention on ensuring that each LGBTQI+ child has access to affirming medical care."[12]

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[5] *See* LAMBDA LEGAL, CHILDREN'S RIGHTS, & CTR. FOR THE STUDY OF SOC. POLICY, *Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care,* at 7 (Apr. 2017), *available at* https://www.lambdalegal.org/sites/default/files/publications/downloads/tgnc-policy- report_2017_final-web_05-02-17.pdf [hereinafter "*Safe Havens*"].
[6] *Id.* at 8 (quoting 42 U.S.C. 675(5)(a)).
[7] Health & Human Servs. Grants Regulation, 81 Fed. Reg. 89393 (Dec. 12, 2016) (codified at 45 C.F.R. pt. 75), *available at* https://www.federalregister.gov/documents/2016/12/12/2016-29752/healthand-human-services-grants-regulation.
[8] *Info. Memorandum ACYF-CB-IM-22-01*, *available at* https://www.acf.hhs.gov/sites/default/files/documents/cb/im2201.pdf. This memorandum supplements the 2011 *Info. Memorandum ACYF-CB-IM-11-03* which stated, "that every child and youth who is unable to live with his or her parents is entitled to a safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression," *available at* https://www.acf.hhs.gov/sites/default/files/documents/cb/im1103.pdf at 1.
[9] *Info Memorandum ACYF-CB-IM-22-01* at 1, 2.
[10] *Id.* at 6.
[11] *Id.* at 6.
[12] *Id.* at 12.

3) Professional standards regarding the well-being of children require that youth be affirmed and supported in all aspects of their identity and not discriminated against.

Professional organizations and associations that set professional standards for the well-being of children in the nation's child welfare system have repeatedly recognized the importance of policies that prohibit discrimination while in care and affirm and support LGBTQ+ youth. The Child Welfare League of America's *Recommended Practices* guide explicitly outlines the need for providers to support and affirm youth in their sexual orientation, gender identity, and gender expression and calls for providers to adopt and implement written policies prohibiting discrimination on the basis of sexual orientation, gender identity, gender expression, and HIV status.[13] The document also affirms that "[t]he overwhelming consensus among the country's leading and most respected child welfare, social science and medical health organizations is that LGBTQ+ youth and adults deserve respect and support from professional service providers."[14]

Further, in 2016, 19 medical and mental health organizations, including the American Academy of Pediatrics, the American Medical Association, and the American Psychological Association, filed an amicus brief with the United States Supreme Court in *Gloucester Cty. Sch. Bd. v. G.G. ex re. Grimm*, weighing in on the importance of affirming all aspects of identity, including accessing sex-segregated spaces consistent with their identity, for the well- being of transgender youth.[15] A group of medical professional associations, including the American Academy of Pediatrics and the American Medical Association also recently filed an amicus brief in support of transgender and nonbinary minors' ability to access medically necessary gender affirming medical care when indicated.[16]

Additional research shows that discrimination on the basis of identity is harmful to the well-being of children. LGBTQ+ youth who experience lower levels of social support or higher rates of anti-LGBTQ animus have been found to have higher rates of mental illness, risky behavior, and poor academic performance.[17] In addition, a recent study from the American Academy of Pediatrics has found that racism is a core social determinant of child health and that experiencing racism predisposes youth to chronic physical and mental health problems.[18] Given that, according to Kids Count data, youth of color represent approximately 58 percent of youth in Arizona's child welfare system[19] and data, outlined below, regarding the prevalence of LGBTQ+ youth in care, rules explicitly protecting youth from discrimination on account of all aspects of their identity is a key component to preventing harm to all aspects of their well-being. As the American Academy of Pediatrics notes, "[a]lthough the endemic nature of racism has powerful impacts on perceived and actual health outcomes it is also important to note that other forms of discrimination (eg, sex, religion, sexual orientation, immigrant status, and disability status) are actively at play and have created a syndemic with the potential to undermine child and family health further."[20]

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[13] *See Recommended Practices*, *supra* at n. 1., at 9-10.
[14] *Id.* at 4.
[15] Brief of Amici Curiae Am. Acad. of Pediatrics et. al, *Gloucester Cty. Sch. Bd*, *supra* n. 2.
[16] Brief of Amici Curiae Am. Acad. of Pediatrics et. al, *Brandt v. Rutledge,* 4:21-CV-00450-JM (8th Cir. 2022) (No. 21-2871), *available at* https://www.aclu.org/cases/brandt-et-al-v-rutledge-et-al?document=Amicus-Brief-of-21-Medical-Groups.
[17] *See* Michelle Birkett et al, *Does It Get Better? A Longitudinal Analysis of Psychological Distress and Victimization in Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 56 J. Adolescent Health 280 (2015); HRC *2018 LGBTQ Youth Report* (2018), *available at* https://www.hrc.org/resources/2018-lgbtq-youth-report; see also Caitlyn Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 Pediatrics 346, 346 (2009).
[18] Maria Trend, Danielle G. Dooley, & Jacqueline Douge, *The Impact of Racism on Child and Adolescent Health*, 144 Pediatrics 1 (2019), *available at* https://pediatrics.aappublications.org/content/pediatrics/144/2/e20191765.full.pdf.
[19] Annie E. Casey Kids Count Data Center, "Children in Foster Care by Race and Hispanic Origin in Arizona," *available at* https://datacenter.kidscount.org/data/tables/6246-children-in-foster-care-by-race-and-hispanic-origin#detailed/2/4/false/871,870,573,869,36,868,867,133,38,35/2638,2601,2600,2598,2603,2597,2602,1353/12992,12993.
[20] Trend, Dooley, & Douge, *The Impact of Racism on Child and Adolescent Health*, 144 Pediatrics 1 (2019), *available at*

4) LGBTQ youth are over-represented in child welfare settings and face worse outcomes than their non-LGBTQ peers and require law, policy, and practice to explicitly and specifically address their needs.

Research, funded by the Administration for Children and Families ("ACF"), has demonstrated that LGBTQ youth are significantly overrepresented in the child welfare system, where they experience worse outcomes than their non-LGBTQ peers.[21] Despite making up only 5 to 7 percent of the general population nationwide, a 2021 ACF-funded study, conducted in Cuyahoga County, Ohio, found that 32 percent of youth in the state's foster care system identify as LGBT[22] and experience higher rates of negative treatment within the system.[23] In addition, LGBTQ youth have a higher than average number of foster care placements and are more likely to be living in a group home environment that their non-LGBTQ peers.[24] Based on NSCAW-II data, 19.6 percent of youth in out-of-home care identifying as LGB were moved from their first placement at the request of their caregiver or foster family, compared with only 8.6 percent of heterosexual youth being moved for this reason. They are also more likely to report being treated badly by the child welfare system,[25] rare more likely to be hospitalized for emotional reasons,[26] and are more likely to become homeless at some point in their life.[27] Higher rates of youth in foster care exiting to homelessness and higher rates of family rejection leads to an extraordinary disproportionally high rate among youth experiencing homelessness with, in some studies, nearly 50 percent of youth experiencing homelessness identifying as LGBTQ.[28]

Further, LGBTQ youth are at heightened risk for emotional and physical victimization, trafficking, self-harm, and other negative health outcomes while in care. According to a study from New York City conducted before comprehensive nondiscrimination policies were put into place, 8 percent of LGBTQ youth were removed or ran away from foster care because of abuse or discrimination, and 56 percent chose to live on the street rather than stay in foster care because they felt safer there. Thus, enacting explicit protections for LGBTQ youth will reduce risks of trafficking, building on DCF's continued efforts in this area, and will serve as homelessness prevention.[29]

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https://pediatrics.aappublications.org/content/pediatrics/144/2/e20191765.full.pdf.

[21] Bianca D.M. Wilson et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles,* UCLA: The Williams Institute (2014), *available at* https://escholarship.org/uc/item/6mg3n153; Theo G.M. Sandfort, *Experiences and Well-Being of Sexual and Gender Diverse Youth in Foster Care in New York City: Disproportionality and Disparities,* New York City Administration for Children's Services (2020), *available at* https://www1.nyc.gov/assets/acs/pdf/about/2020/WellBeingStudyLGBTQ.pdf.

[22] Marlene Matarese et al., *The Cuyahoga Youth Count: A Report on LGBTQ+ Youth Experience in Foster Care*, The Institute for Innovation & Implementation, University of Maryland School of Social Work (2021), , *available at* https://theinstitute.umaryland.edu/media/ssw/institute/Cuyahoga-Youth-Count.6.8.1.pdf

[23] *The Cuyahoga Youth Count*, at 5.

[24] *Id.* at 6.

[25] *Sexual and Gender Minority Youth* at 35.

[26] *Id.* at 38.

[27] *Id*.

[28] *Safe Havens, at 6.*

[29] *See* Laura T. Murphy, *Labor and Sex Trafficking Among Homeless Youth*, Covenant House Intl. (2016), *available at* https://www.covenanthouse.org/sites/default/files/inline-files/Loyola%20Multi-City%20Executive%20Summary%20FINAL.pdf.

Conclusion

In conclusion, our proposed recommendations will ensure these regulations prevent further harm by prohibiting discrimination; align them with federal and state requirements and standards from professional child welfare organizations; provide for the specific needs of a significantly overrepresented group in the child welfare system who experience worse outcomes, LGBTQ+ youth; and further help DCS align its practice with its principles. We are happy to answer any questions you may have and look forward to working with DCS on these regulations.

Respectfully submitted,

ACLU of Arizona
Children's Action Alliance
Divine Sisters Group Home
Lambda Legal
Beth Rosenberg

TITLE 21 CHILD SAFETY
CHAPTER 7 DEPARTMENT OF CHILD SAFETY - CHILD WELFARE AGENCY LICENSING

ARTICLE 1 LICENSING REQUIREMENTS FOR A CHILD WELFARE AGENCY

R21-7-101. Definitions

…

36. "Foster care" means care and supervision provided to a child in care who is in a licensed out of home placement.

37. "Gender" or "gender identity" means a person's internal identification as male, female, or nonbinary. Gender identity may or may not correspond to the sex assigned at birth.

3~~7~~***8***. "Good standing" means the Child Welfare Agency is in substantial compliance with obligations under this Chapter, not subject to an open investigation, not subject to an open licensing concern, not subject to suspension, and not subject to any outstanding corrective actions.

. . .

70. "Runaway" means that:
    a. The responsible agency staff is unaware of a child in care's whereabouts, has made reasonable attempts to locate the child including contacting the child's school, friends, and other places the child may frequent and has no information indicating when the child will return;
    b. A child in care has left a facility without the permission of the responsible agency staff; or
    c. A child in care has failed to return to a facility ***within two hours of*** ~~at~~ an agreed upon time.

…

R21-7-104. Licensing Requirements

…

E. Licensing
    1. The applicant shall cooperate with the Department to evaluate the potential and actual ability of the Agency to fulfill a need for and provide services to a child in care according to the standards prescribed in A.R.S. § 8-505 and this Chapter.
    2. The applicant shall demonstrate a need for its services in the community. Demonstration of need shall consist of:
        a. Verifiable written communication from potential referral sources seeking services from the applicant consistent with their program description;
        b. An existing contract for Child Welfare services; or
        c. Other verifiable evidence that demonstrates a need for the services.
    3. To obtain this information, the Department shall make a minimum of at least one visit to the licensee facility and may conduct any staff interviews the Department deems necessary.
    4. The applicant must not discriminate in the provision of care or services on the basis of race, color, religion or spirituality, ability status, age, sex, genetics, sexual orientation, gender identity, national origin, marital status, veteran status, or political beliefs.

…

R21-7-106. License; Operating Certificate; Term; Non-transferability

A. License
    1. A Child Welfare Agency license is valid for one year from the date of issuance or as described in R21-7-111 for a provisional license. The Agency may apply to renew the license annually. License renewal is not automatic.
    2. Each license shall state in general terms the type of Child Welfare services the licensee is authorized to undertake, including any additional Child Welfare services the Agency may be licensed to provide under this Chapter. The licensee shall:
        a. Identify the Agency name,

b. Address of the administrative office,
c. State the geographical area the Agency is licensed to operate, and
d. If licensed as a residential group care facility, the license shall also include:
i. Each facility the Agency operates,
ii. Specify children's ages and gender***s***, and
iii. List the total number of children the Agency is authorized to serve.

. . .

B. Operating Certificate
1. If an Agency's administrative office is located separately from an Agency facility, the Department shall issue a license to the Agency and an operating certificate for each separate facility. If the Agency and facility occupy the same location, the Department shall issue only a license.
2. An operating certificate shall:
a. Identify the Agency operating the facility;
b. Identify the facility name, if different from the Agency name, and the geographical area in which the facility is authorized to operate;
c. List the type of service or program to be offered at the facility; and
d. Specify the number, gender***s***, and ages of children the facility may receive for care.

…

R21-7-107. Child Welfare Agency Initial License Application Package

…

6. Program
a. Curriculum and materials, as related to the Agency's program.
b. Program description of the Agency's program and services addressing the following areas:
i. Goals and objectives;
ii. All services the applicant intends to provide;
iii. Any organization from which the applicant will seek accreditation;
iv. The demographics of the children the applicant plans to serve; and
v. The applicant's primary source of referrals, consistent with the applicant's demonstration of need.
c. The program description for a residential group care facility shall include the following areas:
i. For each facility, the number of children the applicant will serve, including the children's age, gender***s***, special needs, or children with specific behavioral issues;

…

R21-7-108. License Renewal Requirements

. . .

D. With a renewal application, the Agency shall also submit the following documentation:

…

9. Copies of all written complaints the Agency has received about its performance at any facility, ***including copies of any complaints or other documentation of complaints from children or adults on behalf of children related to the discriminatory treatment of the child, the child's safety, or the child's wellbeing, and the Agency's response to the complaints.*** This does not include any licensing complaints investigated by the Department during the expiring licensing year;

…

R21-7-110. Licensing Decision

. . .

F. The Department may restrict or limit the license, including the capacity, age, or gender***s*** of children

that may be placed in residential group care facility.

. . .

J. A Child Welfare Agency is limited to the capacity, age, gender***s***, and other conditions or restrictions specified on the license and operating certificate.

…

R21-7-116. Appeals

. . .

C. The following are not appealable:

1. Corrective Action Plan;
2. Parameters specified by the Department on the license or operating certificate, including the capacity, age group, gender***s***, and other conditions or restrictions; and
3. Denial or revocation of approval for an alternate method of compliance.

R21-7-131. Standards; Qualifications for Specific Positions

A. All positions, including executive positions shall:

1. Conduct themselves professionally and ethically;
2. Comply with federal and state laws and rules, Agency policies and directives;
3. Immediately correct problems to ensure the safety of children in care;
4. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, or favoritism;
5. Be courteous, considerate, and prompt in interactions with the children in care and service providers including the Department;
6. Conduct themselves in a manner that will not bring discredit or embarrassment upon the Agency or the Department;
7. Treat children with dignity and respect and not engage in discriminatory treatment on the basis of race, color, religion or spirituality, ability status, age, sex, genetics, sexual orientation, gender identity, national origin, marital status, veteran status, or political beliefs.
8. Not attempt to change or discourage a child's sexual orientation, gender identity, or gender expression or prohibit expression, including through clothing or grooming, consistent with the child's gender or gender expression.

…

R21-7-132. Orientation and Training for Staff

. . .

C. The licensee's policy shall require staff to complete the initial orientation and training to include:

1. Training all staff on the following:

. . .

f. The licensee's policies, ***including nondiscrimination policies,*** and procedures;

. . .

2. Training direct care staff on the following:
a. Confidentiality,
b. Client and family rights, ***including protections for the child in this chapter,***
c. Grievances,

…

D. The licensee's ongoing training plan shall require that:

. . .

2. All direct care staff shall receive annual training which shall include the following topics:

. . .

g. Sensitivity towards and skills related ***to supporting lesbian, gay, bisexual, transgender, or questioning*** children ~~who identify as part of the lesbian, gay,~~

~~bisexual, transgender, or questioning community~~;

h. Strategies for addressing safety concerns and challenges faced by ***and developing the strengths of lesbian, gay, bisexual, transgender, or questioning*** ~~by~~ children ~~who identify as part of the lesbian, gay, bisexual, transgender, or questioning community;~~

…

R21-7-133. Monitoring

A. The Department shall monitor the ongoing operations of an Agency and its facility.

B. The Department's monitoring activities may include the following:

1. Announced and unannounced inspections or observations of an Agency or a facility, including both the premises and internal operations, books, records, policies, ***including nondiscrimination policies***, procedures, logs, manuals, files, inspection reports, certificates, and any other document required by this Chapter; and

2. Interviews with a child, client, staff, management, or other person with information about the Agency.

C. The licensee shall cooperate with the Department's monitoring activities.

R21-7-135. Additional Provisions for a Child Placing Agency

A. Each Child Placing Agency shall compile an operations manual that is available to all Agency staff. All staff shall be familiar with the operations manual, which shall contain:

1. The mission statement with the overall philosophy that guides the Agency's services;
2. A statement of the primary purpose, services, and goals of the Agency;
3. A chart of organizational structure;

4. The Agency's intake policies and procedures***, including a nondiscrimination policy in compliance with nondiscrimination requirements contained in this chapter*;**

. . .

E. When placing a child in care:

1. The Child Placing Agency shall follow the placement requirements and procedures in A.R.S. §§ 8- 514, 8-516, 8-528, and 8-813; and
2. The Child Placing Agency shall, at the time of placement, provide the foster parent or other placement with the documents and information for each child in care required under A.R.S. § 8- 514.

3. The placement of a child shall not be delayed or denied based on the child's race, color, religion or spirituality, ability status, age, sex, genetics, sexual orientation, gender identity, national origin, marital status, veteran status, or political beliefs.

…

ARTICLE 2 RESIDENTIAL GROUP CARE FACILITIES

R21-7-203. Statement of Purpose; Program Description and Evaluation; Compliance with Adopted Policies; Child Rights

A. The licensee shall have a written statement that describes its philosophy, purpose, and program for a child in their care.

B. The licensee shall have a written program description of all services each facility provides to a child in care and their families and the methods of service delivery.

C. The licensee shall adhere to and enforce all plans, policies, and procedures that the licensee adopts in accordance with this Chapter.

D. The licensee shall provide a copy of the rights listed in A.R.S. § 8-529 to each child in care age 12 and older and for children less than 12 years of age as developmentally appropriate. This information shall be posted in a conspicuous location within each facility.

E. The licensee shall ensure that the person assisting the child in care with personal care be of the same

gender, if needed.

F. The licensee shall not engage in discriminatory treatment or harassment on the basis of a child's race, color, religion or spirituality, ability status, age, sex, genetics, sexual orientation, gender identity, national origin, marital status, veteran status or political beliefs.

R21-7-205. Grievances

A. The licensee shall have a written policy and procedure governing the receipt, consideration, and resolution of grievances regarding the licensee's program and care of children brought to the licensee by a child in care, or child's parent or guardian. The policy and procedure shall:
   1. Be written in a clear and simple manner that is developmentally appropriate for a child in care;
   2. Prohibit retaliation against an individual who brings a grievance, ***including providing a safe and private way for a child to submit a grievance;***
   3. Describe a process for fair and expeditious resolution of a grievance;
   4. Provide a means to tell the grievant about the action taken in response to the grievance;
   5. Provide the grievant with instructions for submitting the grievance to the licensee;
   6. Identify an accessible location for blank copies of the grievance form in each facility.

. . .

C. The licensee shall provide the log of grievances filed against the agency to DCS annually.

~~C.~~***D.*** The licensee shall maintain written records of a grievance decision for at least three years after the resolution of the grievance, or three years after the child has left the Agency, whichever is later.

R21-7-211. Admission and Intake; Criteria; Process; Restrictions

. . .

B. Intake Assessment:
   1. Prior to admitting a child into a facility, a licensee shall:
      a. Ensure the child has a current intake assessment covering the child's social, health, educational, legal, family, behavioral, psychological, and developmental history; or
      b. Completes such an assessment within seven workdays following the child's admission;
      c. Ensure its polices and practices respect the identity of transgender and nonbinary youth and allow for placement consistent with identity as guided by the youth's preference.
   2. In this subsection, "current" means within the six months prior to admission.

…

R21-7-217. Children's Clothing and Personal Belongings

. . .

E. If the licensee limits a child's right to have, wear, or display certain clothes, shoes, or personal belongings, the licensee shall:
   1. Have a written policy explaining the limitations and the reasons for the limitations, and
   2. Explain the limitations to the child in a form and manner that the child can understand.
   3. Do not discriminate based on a child's gender expression.

…

R21-7-224 Health Care Services

A. General health care for a child in care:
   1. The licensee shall have policy and procedures identifying how the Agency will comply with the health services for children as required in this Section. The policy shall identify where a child may obtain qualified health care, 24-hours per day, seven days per week.
   2. The licensee shall meet the preventive, routine, and emergency medical, dental, vision, and behavioral health needs of a child to include the following as necessary:

a. Evaluation and diagnosis,
b. Treatment, and
c. Consultation.
d. This includes all medically necessary care, including gender affirming medical and mental health care subject to existing laws governing health care and consent to health care.

…

R21-7-227. Nurture; Supervision; Positive Behavior Management

A. An Agency shall nurture a child in care by:
1. Providing the child with opportunities to develop emotionally, socially, culturally, physically, and educationally, as appropriate to the child's skill and developmental level;
2. Helping the child develop a positive identity by respecting the child's race, ethnicity, religion, gender, gender identity, gender expression, culture, and sexual orientation by making active efforts to create an inclusive environment including celebrating holidays, displaying artwork, and providing meals that reflect the child's identity, and seeking out opportunities for the child to increase their connectedness to communities that reflect their identities;
3. Ensure the child is not discriminated against on the basis of a child's race, color, religion or spirituality, ability status, age, sex, genetics, sexual orientation, gender identity, national origin, marital status, veteran status or political beliefs.
~~3.~~ 4. Providing the child with opportunities to express preferences and make choices appropriate to the child's age and developmental level;

. . .

G. The licensee shall not use or threaten to use, or engage in and shall not permit any other person to use or threaten to use, or engage in, the following or similar punishment or maltreatment of a child in care including:

. . .

10. Derogatory remarks about the child, the child's race, religion, ethnic origin, sexual orientation, gender identity, gender expression ***(including any attempts to change or discourage a child's sexual orientation, gender identity, or gender expression)*** or about a person who is significant to the child;

. . .

R21-7-231. Sleeping Arrangements; Areas; Furnishings

A. The licensee shall provide a child in care with a bedroom.

. . .

10. A child in care, age 6 or older, ***may*** ~~shall not~~ share a bedroom with a child of ~~the opposite~~ ***a different*** gender ***with written authorization by the agency***.

. . .

R21-7-232. Bathrooms

The licensee shall maintain a bathroom and bathroom fixtures in good operating and sanitary condition, and shall:

. . .

2. ~~Not p~~***P***ermit a child in care age 5 or more to use a bathroom with someone of a different gender at the same time ***with authorization by the agency and a plan to ensure privacy and safety for all children***; and

. . .

Trevino, Angelica, P (Angie)

From: Ptak, Kathryn
Sent: Wednesday, June 7, 2023 9:27 AM
To: mzelkind@lambdalegal.org
Cc: Molly Dunn; CCook@lambdalegal.org
Subject: Department of Child Safety Response to Written Comment AAC Title 21, Chapter 7, Articles 1 & 2

Dear ACLU of Arizona, Children's Action Alliance, Divine Sisters Group Home, Lambda Legal, and Beth Rosenberg-

Thank you for your comments to the Department of Child Safety's ("Department") proposed rules regarding child welfare agency licensing (Arizona Administrative Code Title 21, Chapter 7, Articles 1 and 2).

The Department's Office of Licensing and Regulation is the licensing and regulatory authority in Arizona that licenses and monitors child welfare agencies, often referred to as congregate care facilities or group homes, across the State of Arizona. This includes a combination of both child welfare agencies that serve children in the custody of the Department, as well as child welfare agencies that do not serve children in the Department's custody. Examples include, but are not limited to, private pay agencies who serve children that are placed by their parents through a church program or an academic opportunity program, or children placed by the federal government via the Office of Refugee Resettlement. By implementing the rules as written, this also allows the 11% of child welfare agencies in Arizona who do not serve children in foster care, and therefore may not be subject to Title IV-E, IV-B or Administration on Children, Youth and Families guidelines, to implement a business model appropriate to their programming.

We understand the importance of respect for a child's identity, and for our contracted congregate staff to have the appropriate training in order to provide a safe environment for all foster children. On December 2, 2021, the Department released a DCS policy (DCS 15-39 LGBTQ+ Policy) that provides a foundation and framework for supporting the emotional and physical safety and well-being of Lesbian, Gay, Bisexual, Transgender, or Questioning/Queer (LGBTQ+) and gender diverse children in the custody of the Department. The Department currently contracts with 89% of the child welfare agencies licensed by the Department. Contractual obligations include following all DCS policies. By addressing these concerns via Department policy and contract, the Department ensures children in foster care are placed with caregivers who will promote their positive development. The Department's policy is consistent with guidance from the Administration for Children, Youth and Families and requirements of Title IV-E and IV-B of the Social Security Act.

We appreciate the comments provided. We will review the Department's policy with the recommendations proposed and will implement changes as appropriate. We look forward to continuing this discussion with all of you.

Katie

ARIZONA DEPARTMENT of CHILD SAFETY

Katie Blades Ptak
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Kathryn.Ptak@AZDCS.Gov
AZDCS Website | Twitter | Facebook | LinkedIn | IG
To report child abuse or neglect: 1-888-SOS-CHILD

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 17

Amend: R9-17-101, R9-17-102, R9-17-104, R9-17-105, R9-17-107, Table 1.1, R9-17-109, R9-17-201, R9-17-202, R9-17-204, R9-17-305, R9-17-307, R9-17-308, R9-17-309, R9-17-310, R9-17-313, R9-17-316, R9-17-317, R9-17-317.01, Table 3.1, R9-17-318, R9-17-321, R9-17-322, R9-17-323, R9-17-324, R9-17-402, R9-17-402.01, R9-17-404, R9-17-404.02, R9-17-404.03, R9-17-404.04, R9-17-404.05, R9-17-404.06, R9-17-404.07, R9-17-405, R9-17-406, R9-17-407, R9-17-408, R9-17-409, R9-17-410, R9-17-411

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 17

Amend: R9-17-101, R9-17-102, R9-17-104, R9-17-105, R9-17-107, Table 1.1, R9-17-109, R9-17-201, R9-17-202, R9-17-204, R9-17-305, R9-17-307, R9-17-308, R9-17-309, R9-17-310, R9-17-313, R9-17-316, R9-17-317, R9-17-317.01, Table 3.1, R9-17-318, R9-17-321, R9-17-322, R9-17-323, R9-17-324, R9-17-402, R9-17-402.01, R9-17-404, R9-17-404.02, R9-17-404.03, R9-17-404.04, R9-17-404.05, R9-17-404.06, R9-17-404.07, R9-17-405, R9-17-406, R9-17-407, R9-17-408, R9-17-409, R9-17-410, R9-17-411

Summary:

This regular rulemaking from the Department of Health Services (Department) seeks to amend thirty-nine (39) rules and two (2) tables in Title 9, Chapter 17 regarding the Medical Marijuana Program. The Department adopted rules to implement the Medical Marijuna Program statutes found in Title 36, Chapter 28.1 of the Arizona Revised Statutes. Laws 2021, Ch. 439 made changes to the statutory requirements for medical marijuana dispensaries and others regulated under these rules including allowing an individual to provide a level I fingerprint clearance card, issued according to A.R.S. § 41-1758.07, rather than submitting fingerprints for a background check; making changes to medical marijuana testing requirements; requiring the

addition of a time frame for testing; and allowing marijuana facility agents to work in dispensaries. The Department is proposing amendments to the rules in response to these recent statutory changes.

Additionally, the Department indicates other changes have been suggested by the regulated community or have been identified as needed by the Department to improve the effectiveness of the rules and make them less burdensome, including addressing inconsistencies with requirements in the rules found in Title 9, Chapter 18 (Adult-Use Marijuna Program); amend rules made obsolete by recent changes in statutory authority; correct cross-references; reduce the burden on stakeholders by eliminating or consolidating steps, procedures or processes; amend rules that are outdated, redundant, or otherwise no longer necessary; and make the rules clearer, more concise, and more understandable.

The Department indicates this rulemaking is the second of two rulemaking packages and some changes were previously made through expedited rulemaking effective September 8, 2022. The Department is completing this rulemaking to make the remaining change to the rules.

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?

The Department indicates, to offset expenses the Department incurs when inspecting a dispensary that plans to conduct certain activities, the Department is adding a fee of $2,500 to rule R9-17-102(A)(5), consistent with a similar fee charged in Title 9, Chapter 18 (Adult-Use Marijuana Program), for an applicant changing activities conducted at the current location of a dispensary or adding activities at a new location for a dispensary.

Pursuant to A.R.S. § 41-1052(E), the Council shall verify that a rule with new fees does not violate A.R.S. § 41-1008. Additionally, the council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present votes to approve the rule. Pursuant to A.R.S. § 41-1008, an agency shall not make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs. Here, A.R.S. § 36-2803(A)(5) grants the Department statutory authority to adopt rules to establish application and renewal fees for registry identification cards, nonprofit medical marijuana dispensary registration certificates, and independent third-party laboratory certificates. As such, Council staff believes the Department's new fee at R9-17-102(A)(5) has specific statutory authority and complies with A.R.S. § 41-1008.

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 indicates it did not review or rely on any study relevant to this rulemaking.

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

The Department anticipates that the rulemaking may affect the Department, dispensaries, laboratories, regulatory identification cardholders, individuals with Post-traumatic Stress Disorder (PTSD), and the general public. The Department believes that making changes to clarify the rules make the rules easier to understand. The department also indicates that many of the changes being made as part of this rulemaking are as a result of statutory changes that were endorsed and supported by Arizona's dispensaries, including changes to reduce the discrepancies between these rules and those in 9 A.C.C. 18. The Department states that changes to analytes to be tested for and to acceptance levels affect both dispensaries and laboratories. In addition, clarification and simplification of technical requirements in the rules mainly affects laboratories. The Department states that as of May 2023, there were 150,179 registry identification cardholders, including 127,288 qualifying patients, 374 designated caregivers, 643 dispensary agents and 273 laboratory agents. Under the rules in 9 A.C.C. 17, there are a total of 137 dispensaries, with 132 operating. There are 20 operating laboratories, with two applications pending. Of the 132 operating dispensaries, all are dually-licensed under the rules in 9 A.C.C. 18. Discrepancies between the two sets of requirements, except where the discrepancies are the result of statutory differences, are being reduced in this rulemaking.

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 believes there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

6. What are the economic impacts on stakeholders?

The Department believes that the changes being made to clarify the requirements in the rules may make the rules easier to understand and provide a significant benefit to all stakeholders, including the Department. The Department indicates that the rules generally reduce administrative and other costs, subject to statutory requirements. The Department states that it has adopted many of the suggestions made by stakeholders to reduce the regulatory burden while preserving health and safety. The Department states that many of the rules in Article 4 are being changed to clarify existing technical requirements; they reflect good laboratory practices and how the rule has been enforced since testing began.

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 and Notice of Final Rulemaking now before the Council, the Department indicates it made clarifying grammatical and technical changes, such as ensuring that the defined term "edible food product" is used in applicable places in the rules and clarifying how a laboratory would get the information about analyte testing that is specified in R9-17-404.06(B)(1)(a)(v) and required to be provided according to R9-17-310(A)(2)(d)(iv).

Council staff does not believe these changes make the final rules substantially different from the proposed rules 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 two comments regarding this rulemaking from the same regulated entity. The comments 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 a registration certificate for a dispensary, issued according to A.R.S. § 36-2804, or laboratory, issued according to A.R.S. § 36-2804.07, is specific to the certificate holder, type of facility, facility location, and scope of services provided. As such, a general permit is not applicable and is not used. While the certificates are not general permits, they meet the exceptions under A.R.S. § 41-1037(A)(2) and (3) in that "[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute" and "[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements." The Department also indicates, except when associated with authorization for the cultivation of marijuana, a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent is a general permit.

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

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

11. Conclusion

This regular rulemaking from the Department seeks to amend thirty-nine (39) rules and two (2) tables in Title 9, Chapter 17 regarding the Medical Marijuana Program. The Department is proposing amendments to the rules in response to these recent statutory changes in Laws 2021, Ch. 439. Additionally, the Department indicates other changes have been suggested by the regulated community or have been identified as needed by the Department to improve the effectiveness of the rules and make them less burdensome, including addressing inconsistencies with requirements in the rules found in Title 9, Chapter 18 (Adult-Use Marijuana Program); amend rules made obsolete by recent changes in statutory authority; correct cross-references; reduce the burden on stakeholders by eliminating or consolidating steps, procedures or processes; amend rules that are outdated, redundant, or otherwise no longer necessary; and make the rules clearer, more concise, and more understandable.

The Department is requesting an effective date of October 1, 2023 pursuant to A.R.S. § 41-1032(A). Specifically, the Department indicates the rulemaking will preserve the public peace, health or safety and provide a benefit to the public and a penalty is not associated with a violation of the rule pursuant to A.R.S. § 41-1032(A)(1) and (4), respectively. Council staff believes the Department has provided adequate justification for an immediate effective date.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

July 12, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, 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. 17, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: June 26, 2023

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 17 partially relates to a five-year-review report approved by the Council on July 7, 2021. In addition, the rulemaking adopts rules to comply with Laws 2021, Ch. 439. A previous expedited rulemaking made other changes identified in the five-year-review report to reduce the burden on regulated entities and comply with a court order.

3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking establishes a new fee under A.R.S. § 36-2803(A)(5).

4. Whether the rulemaking contains a fee increase:
The rulemaking does not contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
The Department is requesting an immediate effective date for the rules.

The Department is requesting that the rules be heard at the Council meeting on September 6, 2023.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

.

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES

MEDICAL MARIJUANA PROGRAM

PREAMBLE

1.	Article, Part or Sections Affected (as applicable)	Rulemaking Action
	R9-17-101	Amend
	R9-17-102	Amend
	R9-17-104	Amend
	R9-17-105	Amend
	R9-17-107	Amend
	Table 1.1	Amend
	R9-17-109	Amend
	R9-17-201	Amend
	R9-17-202	Amend
	R9-17-204	Amend
	R9-17-305	Amend
	R9-17-307	Amend
	R9-17-308	Amend
	R9-17-309	Amend
	R9-17-310	Amend
	R9-17-313	Amend
	R9-17-316	Amend
	R9-17-317	Amend
	R9-17-317.01	Amend
	Table 3.1	Amend
	R9-17-318	Amend
	R9-17-321	Amend
	R9-17-322	Amend
	R9-17-323	Amend
	R9-17-324	Amend
	R9-17-402	Amend

R9-17-402.01	Amend
R9-17-404	Amend
R9-17-404.02	Amend
R9-17-404.03	Amend
R9-17-404.04	Amend
R9-17-404.05	Amend
R9-17-404.06	Amend
R9-17-404.07	Amend
R9-17-405	Amend
R9-17-406	Amend
R9-17-407	Amend
R9-17-408	Amend
R9-17-409	Amend
R9-17-410	Amend
R9-17-411	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. §§ 36-132(A)(1) and 36-136(G)

Implementing Statutes: A.R.S. §§ A.R.S. §§ 36-2803, 36-2204, 36-2804.01, 36-2806, and 36-2819

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests that the rules go into effect on October 1, 2023. The rulemaking satisfies the requirements in A.R.S. § 41-1032(A)(1) and (4) in that they improve public health and safety and provide a benefit to the public, without penalty for violation of the rule. In addition, many of the rules are less stringent and burdensome than the current rules.

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 Proposed Rulemaking 29 A.A.R. 1093, May 19, 2023

Notice of Final Expedited Rulemaking 28 A.A.R. 2562, September 30, 2022

Notice of Proposed Expedited Rulemaking 28 A.A.R. 1414, June 17, 2022

Notice of Docket Opening: 28 A.A.R. 1073, May 20, 2022

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

Name: Megan Whitby, Deputy Assistant Director

Address: Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 400
Phoenix, AZ 85007
Telephone: (602) 364-3052
Fax: (602) 364-2079
E-mail: Megan.Whitby@azdhs.gov
or
Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.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 (A.R.S.) Title 36, Chapter 28.1, specifies requirements for the regulation of medical marijuana dispensaries, dispensary agents, laboratories, and laboratory agents, as well as for qualifying patients and designated caregivers. The Arizona Department of Health Services (Department) has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 17. Laws 2021, Ch. 439, made changes to the requirements for medical marijuana dispensaries and others regulated under 9 A.A.C. 17. These include allowing an individual to provide a level I fingerprint clearance card, issued according to A.R.S. § 41-1758.07, rather than submitting fingerprints for a background check; making changes to medical marijuana testing requirements; requiring the addition of a time frame for testing; and allowing marijuana facility agents to work in dispensaries. Other changes have been suggested by the regulated community or have been identified as needed by the Department. After obtaining an exception from the Governor's rulemaking moratorium established under Executive Order 2022-01, the Department is making changes to the rules in 9 A.A.C. 17 to improve the effectiveness of the rules and make them less burdensome, including addressing inconsistencies with requirements in 9 A.A.C. 18; amend rules made obsolete by recent changes in statutory authority; correct cross-references; reduce the burden on stakeholders by eliminating or

consolidating steps, procedures or processes; amend rules that are outdated, redundant, or otherwise no longer necessary; and make the rules clearer, more concise, and more understandable. Some changes were made through expedited rulemaking effective September 8, 2022. Now the Department is making other changes to the rules to complete the rulemaking.

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:

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

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

Not applicable

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

The Department anticipates that the rulemaking may affect the Department, dispensaries, laboratories, registry identification cardholders, individuals with Post-traumatic Stress Disorder (PTSD), and the general public. Annual costs/revenues changes are designated as minimal when more than $0 and $2,500 or less, moderate when between $2,500 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.

The Department believes that making changes to clarify the rules may make the rules easier to understand and provide a significant benefit to all stakeholders, including the Department. The Department may also receive a significant benefit from the removal of the requirement for the Department to preschedule an inspection of a dispensary or the dispensary's cultivation site, to comply with A.R.S. § 36-2806(H). However, this change could result in the Department uncovering more instances in which a dispensary is not in compliance with requirements in the rules and may cause the Department to incur up to substantial costs related to enforcement, but also to receive up to moderate benefits. To offset expenses the Department incurs when inspecting a dispensary that plans to conduct certain activities, the Department is adding a fee, consistent with that in 9 A.A.C. 18 for changing activities conducted at the current location of a dispensary or adding activities at a new location for a dispensary. The Department anticipates that the Department may receive up to a substantial benefit from this change. Making changes related to the Department's denial or revocation of approval of a parameter for testing may provide a minimal-to-moderate benefit to the Department, while making changes related to the denial or

revocation of a laboratory agent's registry identification card provide a significant and, if the amount of technical assistance needing to be provided is reduced, perhaps a minimal-to-moderate benefit to the Department.

Many of the changes being made as part of this rulemaking are as a result of statutory changes that were endorsed and supported by Arizona's dispensaries, including changes to reduce the discrepancies between these rules and those in 9 A.A.C. 18. The Department expects that the addition of a fee, consistent with requirements in Chapter 18, for a dispensary that wants to change activities at a current location or add activities at a new location may impose a minimal cost on those dispensaries making such requests. Offsetting these costs is the change specifying that the Department may, rather than shall, deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary did not obtain an approval to operate the dispensary or marijuana establishment, as applicable, within 18 months after the dispensary registration certificate or marijuana establishment license was issued, which may provide up to a substantial benefit to a dispensary. The Department believes that the removal of the requirement for the Department to preschedule an inspection of a dispensary or the dispensary's cultivation site may cause a significant burden on a noncompliant dispensary. Changes made related to inventory control, labeling, and packaging may result in a dispensary incurring up to a substantial cost increase related to the packaging container and labeling, and provide a significant benefit related to inventory control. Some changes being made related to security may provide a dispensary with a significant benefit, while the addition of security-related requirements for vehicles that transport medical marijuana or marijuana products, consistent with new statutory requirements, may cause a dispensary to incur up to a substantial increase in costs, depending on the number of vehicles a dispensary uses.

Some changes, such as changes to analytes to be tested for and to acceptance levels, affect both dispensaries and laboratories. The Department believes that allowing a topical marijuana product that is intended to contain isopropanol to test positive for isopropanol, removing requirements for testing for propane or Acequinocyl, and clarifying what forms of abamectin, pyrethrins, and Spinosad are to be tested for may provide up to a substantial benefit to a dispensary. While reducing the number of analytes to be tested for may provide a benefit to a dispensary, this reduction may cause a laboratory to incur up to a substantial reduction in revenue. Changes lowering the acceptance level for *E. coli* and mercury could cause up to a substantial increased cost to a dispensary. Because some marijuana products do not need to be tested by a laboratory for all analytes, the new rules clarify that the policies and procedures regarding the process for submitting a sample of medical marijuana or a marijuana product for testing must

include specifying the analytes to be tested for consistent with R9-17-317.01. This change may cause a dispensary to incur a minimal additional cost, but provide a laboratory performing the testing with a significant benefit. Conversely, the statutory requirement for establishing time-frames for testing may provide a significant benefit to a dispensary, while a laboratory may incur up to a substantial cost to comply with the time-frames.

The rules also contain changes that mainly affect laboratories. Clarification and simplification of technical requirements in the rules may provide a significant benefit to a laboratory, but the Department believes that a laboratory that was not following good laboratory practices could incur up to a substantial cost to come into compliance. The removal of requirements related to accuracy testing are the result of the maturing of the marijuana industry and the availability of samples for proficiency testing. A laboratory may incur a minimal-to-moderate cost increase due to the changes related to proficiency testing and accuracy testing. Similarly, the new rules make changes related to analyses for microbial contamination, and the Department believes that these may impose up to a moderate cost on a laboratory and may provide up to a moderate benefit. Consistent with statutes, the new rules now specify that a laboratory owner may not have a direct or indirect familial or financial relationship with or interest in a marijuana establishment, which may impose a significant burden on a laboratory. The removal of references to testing for herbicides, changes related to the denial or revocation of a laboratory agent's registry identification card, and clarification of requirements related to the Department's denial or revocation of approval of a parameter for testing may provide a significant benefit to a laboratory. The Department anticipates that changes and clarifications on applications may provide a significant benefit to laboratories. If a laboratory did not understand and comply with these or any other of the requirements being clarified, the Department believes that now understanding the requirements could cause a laboratory to incur up to substantial costs for complying with them.

Registry identification cardholders include qualifying patients, designated caregivers, dispensary agents, and laboratory agents. The Department anticipates that lowering the maximum level of *E. coli* contamination in edible marijuana or a marijuana-infused edible food product and the maximum level of mercury contamination in inhalable marijuana or an inhalable marijuana product may provide a significant benefit to a qualifying patient. Removing the requirement that physical examinations needed to apply or renew a qualifying patient's registry identification card may also provide a further significant benefit to a qualifying patient. Changes related to the denial or revocation of a dispensary agent's registry identification card, as well as other clarifications related to having level I fingerprint clearance card or requirements for related to hand-washing sinks and transport of marijuana or marijuana products, may also provide a significant benefit to a

dispensary agent. A laboratory agent may also receive a significant benefit from changes being made related to using a U.S. passport card instead of a passport, clarifying that a laboratory agent is deemed to not have been convicted of an excluded felony offense through holding a valid level I fingerprint clearance card, and removal of the requirement for the Department to revoke a laboratory agent's registry identification card if the laboratory agent does not have a qualifying patient registry identification card and uses marijuana.

Individuals with Post-traumatic Stress Disorder (PTSD may receive a significant benefit from the specific addition of PTSD to the list of debilitating medical conditions. The Department expects that the general public may also receive a significant benefit from changes to comply with statutory requirements, improve the supply and quality of medical marijuana and marijuana products, and protect health and safety.

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

Between the proposed rulemaking and final rulemaking, the Department made clarifying grammatical and technical changes, such as ensuring that the defined tern "edible food product" is used in applicable places in the rules and clarifying how a laboratory would get the information about analyte testing that is specified in R9-17-404.06(B)(1)(a)(v) and required to be provided according to R9-17-310(A)(2)(d)(iv).

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

During the formal public comment period, the Department received one set of written comments about the rules, which are summarized below. Three members of the public, representing themselves, attended the oral proceeding held on June 26, 2023, through teleconferencing, but they did not provide any comments. No regulated entity or member of the public attended in-person.

Comments Received	Department's Responses
A comment was received from a regulated entity regarding R9-17-317.01, stating that there "isn't a path for retesting a product's potency," so "R9-17-317.01(C) is moot."	The requirements in R9-17-317.01(C) allow for the retesting of a sample of medical marijuana or a marijuana product that fails to meet the standards in Table 3.1 upon initial testing. This benefit to dispensaries is in the current rules to take into consideration that one laboratory may have erred in testing, while still protecting health and safety. The change being made as part of this rulemaking is to provide an additional benefit by allowing for simultaneous retesting by no more than two other laboratories of a sample that failed an initial test, rather than requiring sequential testing to determine if the initial testing may have resulted in an incorrect result. The steps stated under

	"Required Action" in Table 3.1 are those that a dispensary needs to take, if the retesting allowed under R9-17-317.01(C) indicates that the sample does not meet the standards in Table 3.1.
A second comment was received from the regulated entity regarding R9-17-318(D)(2)(c), concerning the need for a camera and monitoring system in a vehicle transporting marijuana, stating that there are challenges to complying with these requirements.	The requirements in R9-17-318 are consistent with the requirements in A.R.S. § 36-2803(A)(4). Currently, 130 of the 137 dispensaries in Arizona are dually licensed as marijuana establishments. A.R.S. § 36-2854(D)(5) requires that the delivery of marijuana be "in unmarked vehicles that are equipped with a global positioning system or similar location tracking system and video surveillance and recording equipment, and that contain a locked compartment in which marijuana and marijuana products must be stored." To comply with these requirements and to reduce the burden on these dually-licensed entities from having two different sets of requirements with which to comply, the Department is making the requirements for transport of marijuana and marijuana products consistent in both 9 A.A.C. 17 and 9 A.A.C. 18. These requirements are also consistent with national standards, and less stringent than those in some other states, such as Washington, where an individual must wear a body cam when making a delivery, and the footage must be stored for 30 days.

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:

A registration certificate for a dispensary, issued according to A.R.S. § 36-2804, or laboratory, issued according to A.R.S. § 36-2804.07, is specific to the certificate holder, type of facility, facility location, and scope of services provided. As such, a general permit is not applicable and is not used. Except when associated with authorization for the cultivation of marijuana, a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent is a general permit.

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.

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

location in the rules:

Although not changed in this rulemaking, the following incorporations by reference are included in the rulemaking:

R9-17-317.01(B)(2): ANSI/ASQ Standard Z1.4 (2018), General Inspection Level II, available at https://asq.org/quality-resources/z14-z19;

R9-17-404.03(B)(2)(a): AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013;

R9-17-404.03(B)(2)(b): USDA - Guidelines for the Validation of Chemical Methods for the FDA FVM Program, 2nd Edition, April 2015;

R9-17-404.03(B)(2)(c): ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005;

R9-17-404.03(C)(2): AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, Appendix A: Equipment, August 2018;

R9-17-404.04(A)(1)(a): Bacteriological Analytical Manual (BAM), 2019;

R9-17-404.04(A)(1)(b): AOAC Official Methods of Analysis, 21st Edition, 2019;

R9-17-404.04(A)(2)(a): AOAC - Appendix J: Guidelines for Validation of Microbiological Methods for Food and Environmental Surfaces, 2012;

R9-17-404.04(A)(2)(b): AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013;

R9-17-404.04(A)(2)(c): ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005;

R9-17-404.04(B)(2): AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, 6.3: Facilities and Environmental Conditions, 6.4: Equipment, 7.7: Ensuring the Validity of Results, and Appendix A: Equipment, August 2018.

Added as part of the rulemaking are the following incorporations by reference:

R9-17-404.03(H)(6) and (I)(2): ASTM E685-93, Standard Practice for Testing Fixed-Wavelength Photometric Detectors Used in Liquid Chromatography, 2013;

R9-17-404.04(A)(2)(d): AOAC SMPR® 2019.001 - Standard Method Performance Requirements (SMPRs®) for Detection of Aspergillus in Cannabis and Cannabis Products;

R9-17-404.04(A)(2)(e): AOAC SMPR® 2020.002 - Standard Method Performance Requirements (SMPRs®) for Detection of Salmonella species in Cannabis and Cannabis Products.

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 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

ARTICLE 1. GENERAL

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

Section

ARTICLE 1. GENERAL

R9-17-101. Definitions

In addition to the definitions in A.R.S. § 36-2801, the following definitions apply in this Chapter unless otherwise stated:

1. "Accreditation" means being deemed as technically competent under ISO 17025 by the:
   a. American Association of Laboratory Accreditation,
   b. Perry Johnson Laboratory Accreditation,
   c. ANSI National Accreditation Board, ~~or~~
   d. International Accreditation Services, or
   e. Commission on Office Laboratory Accreditation.

~~2. "Accuracy testing" means a mechanism in which a laboratory performs testing on samples with known characteristics, prepared by the laboratory, to determine a laboratory agent's ability to analyze samples within specific acceptance criteria.~~

~~3.~~2. "Acquire" means to obtain through any type of transaction and from any source.

~~4.~~3. "Activities of daily living" means ambulating, bathing, dressing, grooming, eating, toileting, and getting in and out of bed.

~~5.~~4. "Amend" means adding or deleting information on an individual's registry identification card that affects the individual's ability to perform or delegate a specific act or function.

~~6.~~5. "Analyte" means a specific substance for which testing is performed by a laboratory.

~~7.~~6. "Applicant" means:
   a. An individual submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent;
   b. An entity submitting an application for a dispensary registration certificate or approval to operate a dispensary; or
   c. An individual or entity submitting an application for a laboratory registration certificate, approval to test, or approval to change parameters.

~~8.~~7. "Batch" means:
   a. When referring to cultivated medical marijuana, a specific lot of medical marijuana that is uniform in strain, grown from one or more seeds or cuttings that are planted and harvested at the same time, and cultivated under the same conditions;
   b. When referring to marijuana products, a specific amount of a marijuana product infused, manufactured, or prepared for sale from the same set of ingredients at

the same time; and

c. When referring to a laboratory testing ~~of~~ medical marijuana or a marijuana product according to R9-17-404.03, a specific set of no more than 20 samples prepared and tested during the same run using the same equipment.

~~9.~~8. "Batch number" means a unique numeric or alphanumeric identifier assigned to a batch by a dispensary when:

a. The batch of medical marijuana is planted, or

b. The batch of a marijuana product is infused, manufactured, or prepared for sale.

~~10.~~9. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.

~~11.~~10. "Change" means:

a. When used in relation to a registry identification card, adding or deleting information on an individual's registry identification card that does not substantively affect the individual's ability to perform or delegate a specific act or function;

b. When used in relation to a place, moving to a different location;

c. When used in relation to an individual, selecting a different individual to perform specific actions;

d. When used in relation to parameters, revising a laboratory's standard operating procedures or quality assurance plan, required in R9-17-404.06, due to:

i. Adding or removing a parameter,

ii. Altering a testing method, or

iii. Using a different instrument for performing a test; and

e. When used in relation to testing results, altering the testing results in any way and for any reason.

~~12.~~11. "Commercial device" means ~~the same as in~~ a "commercial device," as defined in A.R.S. § 3-3401, that is licensed or certified according to A.R.S. § 3-3451.

~~13.~~12. "Contaminant" means matter, pollutant, hazardous substance, or other substance that is not intended to be part of dispensed medical marijuana or a marijuana product.

~~14.~~13. "Cultivation site" means the one additional location where marijuana may be cultivated, infused, or prepared for sale by and for a dispensary.

~~15.~~14. "Current photograph" means an image of an individual, taken no more than 60 calendar days before the submission of the individual's application, in a Department-approved electronic format capable of producing an image that:

a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;

b. Is 2 inches by 2 inches in size;

c. Is in natural color;

d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;

e. Has a plain white or off-white background; and

f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.

~~16.~~15. "Denial" means the Department's final decision not to issue a registry identification card, a dispensary registration certificate, a laboratory registration certificate, or an approval of a change of dispensary or a dispensary's cultivation site location, to an applicant because the applicant or the application does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.

~~17.~~16. "Dispensary" means the same as "nonprofit medical marijuana dispensary" as defined in A.R.S. § 36-2801.

~~18.~~17. "Dispensary agent" means the same as "nonprofit medical marijuana dispensary agent" as defined in A.R.S. § 36-2801.

~~19.~~18. "Dual licensee" means the same as in A.R.S. § 36-2850.

~~20.~~19. "Edible food product" means a substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human oral consumption.

~~21.~~20. "Enclosed area" when used in conjunction with "enclosed, locked facility" means outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate.

~~22.~~21. "Entity" means the same as in A.R.S. § 29-2102.

~~23.~~22. "Generally accepted accounting principles" means the set of financial reporting standards established by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or another specialized body dealing with accounting and auditing matters.

~~24.~~23. "Geographic area" means the same as in A.R.S. § 36-2803.01.

~~25.~~24. "In-state financial institution" means the same as in A.R.S. § 6-101.

~~26.~~25. "Inhalable" means intended for use through intake into the lungs of an individual.

~~27.~~26. "Laboratory" means the same as "independent third-party laboratory" as defined in A.R.S. § 36-2801.

~~28.~~27. "Laboratory agent" means the same as "independent third-party laboratory agent" as defined in A.R.S. § 36-2801.

~~29.~~28. "Legal guardian" means an adult who is responsible for a minor:

a. Through acceptance of guardianship of the minor through a testamentary appointment or an appointment by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2; or

b. As a "custodian" as defined in A.R.S. § 8-201.

29. "Manufacture" or "manufactured" means the same as in A.R.S. § 36-2850.

~~30.~~30. "Marijuana establishment" means the same as in A.R.S. § 36-2850.

~~31.~~31. "Marijuana facility agent" means the same as in A.R.S. § 36-2850.

32. "Marijuana product" means the same as in A.R.S. § 36-2850.

33. "Matrix" means the specific components of a sample, other than the analyte being tested for.

~~32.~~34. "Medical record" means the same as:

a. "Adequate records" as defined in A.R.S. § 32-1401,

b. "Adequate medical records" as defined in A.R.S. § 32-1501,

c. "Adequate records" as defined in A.R.S. § 32-1800, or

d. "Adequate records" as defined in A.R.S. § 32-2901.

~~33.~~35. "Out-of-state financial institution" means the same as in A.R.S. § 6-101.

~~34.~~36. "Parameter" means the combination of a particular type of sample with a specific instrument or equipment by which the sample will be tested for a specific analyte or characteristic.

~~35. "Proficiency testing" means a mechanism in which samples with known characteristics are submitted to a laboratory for analysis to determine a laboratory agent's ability to analyze samples within specific acceptance criteria.~~

37. "Proficiency testing" means a mechanism to determine a laboratory agent's ability to analyze samples within specific acceptance criteria in which the characteristics of the samples are known by the source of the samples but are unknown to a laboratory receiving the samples from the source.

~~36.~~38. "Proficiency testing service" means an independent company or other person acceptable to the Department, based on ISO/IEC 17043:2010 certification, that:

a. Is the source for samples with known characteristics for proficiency testing, and

b. Assesses the acceptability of a laboratory agent's results from the samples with known characteristics during proficiency testing.

~~37.~~39. "Private school" means the same as in A.R.S. § 15-101.

~~38.~~40. "Public school" means the same as "school" as defined in A.R.S. § 15-101.

~~39.~~41. "Registry identification number" means the random 20-digit alphanumeric identifier generated by the Department, containing at least four numbers and four letters, issued by the Department to a qualifying patient, designated caregiver, dispensary, dispensary agent, laboratory, or laboratory agent.

~~40.~~42. "Revocation" means the Department's final decision that an individual's registry identification card, a dispensary registration certificate, or a laboratory registration certificate is rescinded because the individual, the dispensary, or the laboratory does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.

~~41.~~43. "Sample" means:

a. A representative portion of a larger quantity of medical marijuana or a marijuana product,

b. A specific quantity of a substance or set of substances to be used for testing purposes, or

c. To collect the representative portion in subsection (39)(a).

~~42.~~44. "Time/temperature control for safety food" means the same as in the Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration, § 1-201.10.

45. "Topical" means intended for use through application to the surface of the skin of an individual.

~~43.~~46. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

R9-17-102. Fees

A. An applicant submitting an application to the Department shall submit the following nonrefundable fees:

1. For registration of a dispensary, $4,000;
2. To renew the registration of a dispensary, $1,000;
3. To change the location of a dispensary, $2,500;
4. To change the location of a dispensary's cultivation site or add a cultivation site, $2,500;
5. To change activities conducted at the current location of a dispensary or add activities at a

new location for a dispensary, $2,500;

~~5.~~6. For a registry identification card for a:

a. Qualifying patient, except as provided in subsection (B), $150;

b. Designated caregiver, $200;

c. Dispensary agent, $500; and

d. Laboratory agent, $500;

~~6.~~7. For renewing a registry identification card for a:

a. Qualifying patient, except as provided in subsection (B), $150;

b. Designated caregiver, $200;

c. Dispensary agent, $500; and

d. Laboratory agent, $500;

~~7.~~8. For amending or changing a registry identification card, $10;

~~8.~~9. For requesting a replacement registry identification card, $10;

~~9.~~10. For registration of a laboratory, $5,000; and

~~10.~~11. To renew the registration of a laboratory, $1,000.

B. A qualifying patient may pay a reduced fee of $75 if the qualifying patient submits, with the qualifying patient's application for a registry identification card or the qualifying patient's application to renew the qualifying patient's registry identification card, a copy of an eligibility notice or electronic benefits transfer card demonstrating current participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program.

R9-17-104. Changing Information on a Registry Identification Card

Except as provided in R9-17-203(B) and (C), to make a change to a cardholder's name or address on the cardholder's registry identification card, the cardholder shall submit to the Department, within 10 working days after the change, a request for the change that includes:

1. The cardholder's name and the registry identification number on the cardholder's current registry identification card;
2. The cardholder's new name or address, as applicable;
3. For a change in the cardholder's name, one of the following with the cardholder's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the cardholder's U.S. passport or a U.S. passport card;
4. For a change in address, the county where the new address is located;

5. The effective date of the cardholder's new name or address; and

6. The applicable fee in R9-17-102 for changing a registry identification card.

R9-17-105. Requesting a Replacement Registry Identification Card

To request a replacement card for a cardholder's registry identification card that has been lost, stolen, or destroyed, the cardholder shall submit to the Department, within 10 working days after the cardholder's registry identification card was lost, stolen, or destroyed, a request for a replacement card that includes:

1. The cardholder's name and date of birth;

2. If known, the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card;

3. If the cardholder cannot provide the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card, a copy of one of the following documents that the cardholder submitted when the cardholder obtained the registry identification card:

   a. Arizona driver's license,

   b. Arizona identification card,

   c. Arizona registry identification card, or

   d. Photograph page in the cardholder's U.S. passport or a U.S. passport card; and

4. The applicable fee in R9-17-102 for requesting a replacement registry identification card.

R9-17-107. Time-frames

A. Within the administrative completeness review time-frame for each type of approval in Table 1.1, the Department shall:

1. Issue a registry identification card, a dispensary registration certificate, an approval to operate a dispensary, an approval of a change to a dispensary registration certificate, a laboratory registration certificate, an approval for testing, or an approval to add a parameter;

2. Provide a notice of administrative completeness to an applicant; or

3. Provide a notice of deficiencies to an applicant, including a list of the information or documents needed to complete the application.

B. An application for approval to operate a dispensary or for a change to a dispensary registration certificate is not complete until the date the applicant states on a written notice provided to the Department according to R9-17-305 or R9-17-307, as applicable, that the dispensary is ready for an inspection by the Department.

C. A laboratory's application for approval for testing or to add a parameter is not complete until the date the applicant states on a written notice provided to the Department according to

R9-17-402.01 or R9-17-404.07, as applicable, that the laboratory is ready for an inspection by the Department.

D. If the Department provides a notice of deficiencies to an applicant:

1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant; and
2. The Department shall consider the application withdrawn if the applicant does not submit the missing information or documents to the Department within the time-frame in Table 1.1.

E. Within the substantive review time-frame for each type of approval in Table 1.1, the Department:

1. According to subsection (H), shall issue or deny:
    a. A registry identification card, dispensary registration certificate, or laboratory registration certificate; or
    b. Approval to operate a dispensary, approval for a change to a dispensary registration certificate, approval for testing, or approval to add a parameter;
2. May complete an inspection that may require more than one visit to a dispensary and, if applicable, the dispensary's cultivation site;
3. May complete an inspection that may require more than one visit to a laboratory; and
4. May make one written comprehensive request for more information, unless the Department and the applicant agree in writing to allow the Department to submit supplemental requests for information.

F. If the Department issues a written comprehensive request or a supplemental request for information:

1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives all of the information requested, and
2. The applicant shall submit to the Department all of the information and documents listed in the written comprehensive request or supplemental request for information within the time-frame in Table 1.1.

G. If an applicant for an initial dispensary registration certificate is allocated a dispensary registration certificate as provided in R9-17-303, the Department shall provide a written notice to the applicant of the allocation of the dispensary registration certificate and issue the dispensary registration certificate.

H. If an application for an initial laboratory registration certificate is approved, the Department shall

review the information and documents submitted according to R9-17-402(A)(4) and:

1. If the information and documents for at least one of the owners comply with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
   a. A laboratory agent registry identification card to any owner who complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
   b. The laboratory registration certificate; and
2. If the information and documents submitted according to R9-17-402(A)(4) for an owner do not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the owner a laboratory agent registry identification card and provide notice to the owner and to the laboratory that includes:
   a. The specific reasons for the denial; and
   b. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

I. The Department shall issue:

1. A registry identification card, renewal of a dispensary registration certificate, an approval to operate a dispensary, an approval for a change to a dispensary registration certificate, a renewal of a laboratory registration certificate, an approval for testing, or an approval to add a parameter, as applicable, if the Department determines that the applicant complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
2. For an applicant for a registry identification card, a denial that includes the reason for the denial and the process for requesting judicial review if:
   a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter; or
   b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information;
3. For an applicant for an initial dispensary registration certificate, if the Department determines that the dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter:
   a. A dispensary registration certificate, if not all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; or
   b. Written notice that:

i. The dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;

ii. The applicant was not allocated a dispensary registration certificate according to the criteria and processes in R9-17-303 because all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; and

iii. The written notice is not a denial and is not considered a final decision of the Department subject to administrative review; or

4. For an applicant for a dispensary registration certificate, an approval to operate, an approval for a change to a dispensary registration certificate, a laboratory registration certificate, an approval for testing, or an approval to add a parameter, a denial that includes the reason for the denial and the process for administrative review if:

a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 or this Chapter; or

b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

Table 1.1 Time-frames

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for applicant to complete application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)	Response Time for Request in R9-17-107(F)(2) (in working days)
Changing a registry identification card	§ 36-2808	10	10	5	5	10
Requesting a replacement registry identification card	§ 36-2804.06	5	5	2	3	10
Applying for a registry identification card for a qualifying patient or a designated caregiver	§ 36-2804.02(A)	15	30	5	10	10
Amending a registry identification card for a qualifying patient or a designated caregiver	§ 36-2808	10	30	5	5	10
Renewing a qualifying patient's or designated caregiver's registry identification card	§§ 36-2804.02(A) and 36-2804.06	15	30	5	10	10
Applying for a dispensary registration certificate	§ 36-2804	30	10	5	25	10
Applying for approval to operate a dispensary	R9-17-305	45	90	15	30	60

Changing a dispensary registration certificate	§ 36-2804 and R9-17-307	90	90	30	60	60
Renewing a dispensary registration certificate	§ 36-2804.06	15	30	5	10	10
Applying for a dispensary agent registry identification card	§§ 36-2804.01 and 36-2804.03	15	30	5	10	10
Renewing a dispensary agent's registry identification card	§ 36-2804.06	15	30	5	10	10
Applying for a laboratory registration certificate	§ 36-2804.07	90	90	30	60	60
Applying for approval for testing	R9-17-402.01	90	90	30	60	~~60~~ 120
Renewing a laboratory registration certificate	§ 36-2804.06	15	30	5	10	~~10~~ 60
Applying to add a parameter	R9-17-404.07	90	90	30	60	~~60~~ 120
Applying for a laboratory agent registry identification card	§ 36-2804.01	15	30	5	10	10
Renewing a laboratory agent's registry identification card	§ 36-2804.06	15	30	5	10	10

R9-17-109. Notifications and Void Registry Identification Cards

A. The Department shall provide written notice that a cardholder's registry identification card is void and no longer valid under A.R.S. Title 36, Chapter 28.1 and this Chapter to a:

1. Qualifying patient when the Department receives notification from:
    a. The qualifying patient that the qualifying patient no longer has a debilitating medical condition, or
    b. The physician who provided the qualifying patient's written certification that the:
        i. Qualifying patient no longer has a debilitating medical condition,
        ii. Physician no longer believes that the qualifying patient would receive therapeutic or palliative benefit from the medical use of marijuana, or
        iii. Physician believes that the qualifying patient is not using the medical marijuana as recommended;
2. Designated caregiver when:
    a. The Department receives notification from the designated caregiver's qualifying patient that the designated caregiver no longer assists the qualifying patient with the medical use of marijuana, or
    b. The registry identification card for the qualifying patient that is listed on the designated caregiver's registry identification card is no longer valid;
3. Dispensary agent when:
    a. The Department receives the written notification, required in ~~R9-17-310(A)(9)~~ R9-17-310(A)(10), that the dispensary agent:
        i. No longer serves as a principal officer, board member, or medical director for the dispensary;
        ii. Is no longer employed by the dispensary; or
        iii. No longer provides volunteer service at or on behalf of the dispensary; or
    b. The registration certificate for the dispensary that is listed on the dispensary agent's registry identification card is no longer valid; or
4. Laboratory agent when:
    a. The Department receives the written notification, required in R9-17-404(10), that the laboratory agent no longer:
        i. Serves as an owner for the laboratory,
        ii. Is employed by the laboratory, or
        iii. Provides volunteer service at or on behalf of the laboratory; or
    b. The registration certificate for the laboratory that is listed on the laboratory

agent's registration identification card is no longer valid.

B. The Department shall void a qualifying patient's registry identification card:

1. When the Department receives notification that the qualifying patient is deceased; or
2. For a qualifying patient under 18 years of age, when the qualifying patient's designated caregiver's registry identification card is revoked.

C. The written notice required in subsection (A) that a registry identification card is void is not a revocation and is not considered a final decision of the department subject to judicial review.

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

R9-17-201. Debilitating Medical Conditions

An individual applying for a qualifying patient registry identification card shall have a diagnosis from a physician of at least one of the following debilitating medical conditions:

1. Cancer;
2. Glaucoma;
3. Human immunodeficiency virus;
4. Acquired immune deficiency syndrome;
5. Hepatitis C;
6. Amyotrophic lateral sclerosis;
7. Crohn's disease;
8. Agitation of Alzheimer's disease;
9. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces cachexia or wasting syndrome;
10. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe and chronic pain;
11. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe nausea;
12. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces seizures, including those characteristic of epilepsy;
13. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe or persistent muscle spasms, including those characteristic of multiple sclerosis;
14. Post-traumatic stress disorder for which the individual is receiving treatment; or
~~14.~~15. A debilitating medical condition approved by the Department under A.R.S. § 36-2801.01 and R9-17-106.

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver

A. Except for a qualifying patient who is under 18 years of age, a qualifying patient is not required to have a designated caregiver.

B. A qualifying patient may have only one designated caregiver at any given time.

C. Except for a qualifying patient who is under 18 years of age, if the information submitted for a

qualifying patient complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the information for the qualifying patient's designated caregiver does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue the registry identification card for the qualifying patient separate from issuing a registry identification card for the qualifying patient's designated caregiver.

D. If the Department issues a registry identification card to a qualifying patient under subsection (C), the Department shall continue the process for issuing or denying the qualifying patient's designated caregiver's registry identification card.

E. The Department shall not issue a designated caregiver's registry identification card before the Department issues the designated caregiver's qualifying patient's registry identification card.

F. Except as provided in subsection (G), to apply for a registry identification card, a qualifying patient shall submit to the Department the following:

1. An application in a Department-provided format that includes:
    a. The qualifying patient's:
        i. First name; middle initial, if applicable; last name; and suffix, if applicable;
        ii. Date of birth; and
        iii. Gender;
    b. Except as provided in subsection (F)(1)(i), the qualifying patient's Arizona residence address and Arizona mailing address;
    c. The county where the qualifying patient resides;
    d. The qualifying patient's e-mail address;
    e. The identifying number on the applicable card or document in subsection (F)(2)(a) through (e);
    f. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
    g. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
    h. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;

i. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;

j. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;

k. An attestation that the information provided in the application is true and correct; and

l. The signature of the qualifying patient and date the qualifying patient signed;

2. A copy of the qualifying patient's:

a. Arizona driver's license issued on or after October 1, 1996;

b. Arizona identification card issued on or after October 1, 1996;

c. Arizona registry identification card;

d. Photograph page in the qualifying patient's U.S. passport or a U.S. passport card; or

e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient:

i. Birth certificate verifying U.S. citizenship,

ii. U.S. Certificate of Naturalization, or

iii. U.S. Certificate of Citizenship;

3. A current photograph of the qualifying patient;

4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:

a. The physician's:

i. Name,

ii. License number including an identification of the physician license type,

iii. Office address on file with the physician's licensing board,

iv. Telephone number on file with the physician's licensing board, and

v. E-mail address;

b. The qualifying patient's name and date of birth;

c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;

d. An identification, initialed by the physician, of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;

e. If the debilitating medical condition identified in subsection (F)(5)(d) is a condition in:

   i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or

   ii. R9-17-201(14), the debilitating medical condition;

f. A statement, initialed by the physician, that the physician:

   i. Has established a medical record for the qualifying patient, and

   ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;

g. A statement, initialed by the physician, that the physician has conducted ~~an in-person~~ a physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;

h. The date the physician conducted the ~~in-person~~ physical examination of the qualifying patient;

i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:

   i. Medical records including medical records from other treating physicians from the previous 12 months,

   ii. Response to conventional medications and medical therapies, and

   iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;

j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;

k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;

l. A statement, initialed by the physician, that, if the physician has referred the

qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;

m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:
    i. The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
    ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;

n. An attestation that the information provided in the written certification is true and correct; and

o. The physician's signature and the date the physician signed;

6. If the qualifying patient is designating a caregiver, the following in a Department-provided format:
    a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
    b. The designated caregiver's date of birth;
    c. The designated caregiver's Arizona residence address and Arizona mailing address;
    d. The county where the designated caregiver resides;
    e. The identifying number on the applicable card or document in subsection (F)(6)(h)(i) through (v);
    f. An attestation signed and dated by the designated caregiver that the designated caregiver:
        i. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
        ii. Is deemed to not have been convicted of an excluded felony offense through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;
    g. A statement signed by the designated caregiver:
        i. Agreeing to assist the qualifying patient with the medical use of marijuana; and

ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

h. A copy of the designated caregiver's:

i Arizona driver's license issued on or after October 1, 1996;

ii. Arizona identification card issued on or after October 1, 1996;

iii. Arizona registry identification card;

iv. Photograph page in the designated caregiver's U.S. passport or a U.S. passport card; or

v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:

(1) Birth certificate verifying U.S. citizenship,

(2) U.S. Certificate of Naturalization, or

(3) U.S. Certificate of Citizenship;

i. A current photograph of the designated caregiver; and

j. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:

i. The designated caregiver's fingerprints on a fingerprint card that includes:

(1) The designated caregiver's first name; middle initial, if applicable; and last name;

(2) The designated caregiver's signature;

(3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;

(4) The designated caregiver's address;

(5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;

(6) The designated caregiver's date of birth;

(7) The designated caregiver's Social Security number;

(8) The designated caregiver's citizenship status;

(9) The designated caregiver's gender;

(10) The designated caregiver's race;

(11) The designated caregiver's height;

(12) The designated caregiver's weight;

(13) The designated caregiver's hair color;

(14) The designated caregiver's eye color; and

(15) The designated caregiver's place of birth;

ii. If the designated caregiver's fingerprints and information required in subsection (F)(6)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; or

iii. Documentation that the designated caregiver has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

7. The applicable fees in R9-17-102 for applying for:

a. A qualifying patient registry identification card; and

b. If applicable, a designated caregiver registry identification card.

G. To apply for a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:

1. An application in a Department-provided format that includes:

a. The qualifying patient's:

i. First name; middle initial, if applicable; last name; and suffix, if applicable;

ii. Date of birth; and

iii. Gender;

b. The qualifying patient's Arizona residence address and Arizona mailing address;

c. The county where the qualifying patient resides;

d. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;

e. The identifying number on the applicable card or document in subsection (G)(5)(a) through (e);

f. The qualifying patient's custodial parent's or legal guardian's Arizona residence address and Arizona mailing address;

g. The county where the qualifying patient's custodial parent or legal guardian resides;

h. The qualifying patient's custodial parent's or legal guardian's e-mail address;

i. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;

j. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the patient's medical record, maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;

k. The qualifying patient's custodial parent's or legal guardian's date of birth;

l. Whether the qualifying patient's custodial parent or legal guardian is requesting authorization for cultivating medical marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;

m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;

n. Whether the individual submitting the application on behalf of the qualifying patient under 18 years of age is the qualifying patient's custodial parent or legal guardian;

o. An attestation that the information provided in the application is true and correct; and

p. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;

2. A current photograph of the:

a. Qualifying patient, and

b. Qualifying patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver;

3. An attestation in a Department-provided format signed and dated by the qualifying patient's custodial parent or legal guardian that the qualifying patient's custodial parent or legal guardian:

a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or

b. Is deemed to not have been convicted of an excluded felony offense through

holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;

4. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
    a. Allowing the qualifying patient's medical use of marijuana;
    b. Agreeing to assist the qualifying patient with the medical use of marijuana; and
    c. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of one of the following for the qualifying patient's custodial parent or legal guardian:
    a. Arizona driver's license issued on or after October 1, 1996;
    b. Arizona identification card issued on or after October 1, 1996;
    c. Arizona registry identification card;
    d. Photograph page in the qualifying patient's custodial parent or legal guardian U.S. passport or a U.S. passport card; or
    e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient's custodial parent or legal guardian:
        i. Birth certificate verifying U.S. citizenship,
        ii. U. S. Certificate of Naturalization, or
        iii. U. S. Certificate of Citizenship;
6. If the individual submitting the application on behalf of a qualifying patient is the qualifying patient's legal guardian, a copy of documentation establishing the individual as the qualifying patient's legal guardian;
7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
    a. The qualifying patient's custodial parent or legal guardian's fingerprints on a fingerprint card that includes:
        i. The qualifying patient's custodial parent or legal guardian's first name; middle initial, if applicable; and last name;
        ii. The qualifying patient's custodial parent or legal guardian's signature;
        iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
        iv. The qualifying patient's custodial parent's or legal guardian's address;

v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;

vi. The qualifying patient's custodial parent's or legal guardian's date of birth;

vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;

viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;

ix. The qualifying patient's custodial parent's or legal guardian's gender;

x. The qualifying patient's custodial parent's or legal guardian's race;

xi. The qualifying patient's custodial parent's or legal guardian's height;

xii. The qualifying patient's custodial parent's or legal guardian's weight;

xiii. The qualifying patient's custodial parent's or legal guardian's hair color;

xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and

xv. The qualifying patient's custodial parent's or legal guardian's place of birth;

b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (G)(7)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the qualifying patient's custodial parent or legal guardian as a result of the application;

c. Documentation that the qualifying patient's custodial parent or legal guardian has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;

8. A written certification from the physician in subsection (G)(1)(i) and a separate written certification from the physician in (G)(1)(j) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:

a. The physician's:

i. Name,

ii. License number including an identification of the physician license type,

iii. Office address on file with the physician's licensing board,

iv. Telephone number on file with the physician's licensing board, and

v. E-mail address;

b. The qualifying patient's name and date of birth;

c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;

d. If the debilitating medical condition identified in subsection (G)(9)(c) is a condition in:

i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or

ii. R9-17-201(14), the debilitating medical condition;

e. For the physician listed in subsection (G)(1)(i):

i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;

ii. A statement, initialed by the physician, that the physician:

(1) Has established a medical record for the qualifying patient, and

(2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;

iii. A statement, initialed by the physician, that the physician has conducted ~~an in-person~~ a physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;

iv. The date the physician conducted the ~~in-person~~ physical examination of the qualifying patient;

v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:

(1) Medical records, including medical records from other treating physicians from the previous 12 months,

(2) Response to conventional medications and medical therapies, and

(3) Profile on the Arizona Board of Pharmacy Controlled Substances

Prescription Monitoring Program database;

vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and

vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:

(1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and

(2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;

f. For the physician listed in subsection (G)(1)(j), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;

g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;

h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;

i. An attestation that the information provided in the written certification is true and correct; and

j. The physician's signature and the date the physician signed; and

9. The applicable fees in R9-17-102 for applying for a:

a. Qualifying patient registry identification card, and

b. Designated caregiver registry identification card.

H. For purposes of this Article, "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from a specific location.

I. For purposes of this Article, "residence address" when used in conjunction with a qualifying

patient means:

1. The street address including town or city and zip code assigned by a local jurisdiction; or
2. For property that does not have a street address assigned by a local jurisdiction, the legal description of the property on the title documents recorded by the assessor of the county in which the property is located.

R9-17-204. Renewing a Qualifying Patient's or Designated Caregiver's Registry Identification Card

A. Except for a qualifying patient who is under 18 years of age, to renew a qualifying patient's registry identification card, the qualifying patient shall submit the following to the Department at least 30 calendar days before the expiration date of the qualifying patient's registry identification card:

1. An application in a Department-provided format that includes:
    a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;
    b. The qualifying patient's date of birth;
    c. Except as provided in subsection (A)(1)(j), the qualifying patient's Arizona residence address and Arizona mailing address;
    d. The county where the qualifying patient resides;
    e. The qualifying patient's e-mail address;
    f. The registry identification number on the qualifying patient's current registry identification card;
    g. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
    h. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
    i. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
    j. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
    k. Whether the qualifying patient would like notification of any clinical studies

needing human subjects for research on the medical use of marijuana;

l. An attestation that the information provided in the application is true and correct; and

m. The signature of the qualifying patient and the date the qualifying patient signed;

2. If the qualifying patient's name in subsection (A)(1)(a) is not the same name as on the qualifying patient's current registry identification card, one of the following with the qualifying patient's new name:

a. An Arizona driver's license,

b. An Arizona identification card, or

c. The photograph page in the qualifying patient's U.S. passport or a U.S. passport card;

3. A current photograph of the qualifying patient;

4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:

a. The physician's:

i. Name,

ii. License number including an identification of the physician license type,

iii. Office address on file with the physician's licensing board,

iv. Telephone number on file with the physician's licensing board, and

v. E-mail address;

b. The qualifying patient's name and date of birth;

c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;

d. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;

e. If the debilitating medical condition identified in subsection (A)(5)(d) is a condition in:

i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or

ii. R9-17-201(14), the debilitating medical condition;

f. A statement, initialed by the physician, that the physician:

i. Has established a medical record for the qualifying patient, and

ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;

g. A statement, initialed by the physician, that the physician has conducted ~~an in-person~~ a physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;

h. The date the physician conducted the ~~in-person~~ physical examination of the qualifying patient;

i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:

i. Medical records including medical records from other treating physicians from the previous 12 months,

ii. Response to conventional medications and medical therapies, and

iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;

j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;

k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;

l. A statement, initialed by the physician, that, if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;

m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:

i. The potential dangers to a fetus caused by smoking or ingesting

marijuana while pregnant or to an infant while breastfeeding, and

ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;

n. An attestation that the information provided in the written certification is true and correct; and

o. The physician's signature and the date the physician signed;

6. If the qualifying patient is designating a caregiver or if the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card, the following in a Department-provided format:

a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;

b. The designated caregiver's date of birth;

c. The designated caregiver's Arizona residence address and Arizona mailing address;

d. The county where the designated caregiver resides;

e. If the qualifying patient is renewing the designated caregiver's registry identification card, the registry identification number on the designated caregiver's registry identification card associated with the qualifying patient;

f. If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, the identification number on and a copy of the designated caregiver's:

i. Arizona driver's license issued on or after October 1, 1996;

ii. Arizona identification card issued on or after October 1, 1996;

iii. Arizona registry identification card;

iv. Photograph page in the designated caregiver's U. S. passport or a U.S. passport card; or

v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:

(1) Birth certificate verifying U.S. citizenship,

(2) U. S. Certificate of Naturalization, or

(3) U. S. Certificate of Citizenship;

g. A current photograph of the designated caregiver;

h. An attestation signed and dated by the designated caregiver that the designated

caregiver:

i. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or

ii. Is deemed to not have been convicted of an excluded felony offense through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;

i. A statement in a Department-provided format signed by the designated caregiver:

i. Agreeing to assist the qualifying patient with the medical use of marijuana; and

ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and

j. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:

i. The designated caregiver's fingerprints on a fingerprint card that includes:

(1) The designated caregiver's first name; middle initial, if applicable; and last name;

(2) The designated caregiver's signature;

(3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;

(4) The designated caregiver's address;

(5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;

(6) The designated caregiver's date of birth;

(7) The designated caregiver's Social Security number;

(8) The designated caregiver's citizenship status;

(9) The designated caregiver's gender;

(10) The designated caregiver's race;

(11) The designated caregiver's height;

(12) The designated caregiver's weight;

(13) The designated caregiver's hair color;

(14) The designated caregiver's eye color; and

(15) The designated caregiver's place of birth; or

ii. If the designated caregiver's fingerprints and information required in subsection (A)(6)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; or

iii. Documentation that the designated caregiver has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;

7. If the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card and the designated caregiver's name in subsection (A)(6)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:

a. An Arizona driver's license,

b. An Arizona identification card, or

c. The photograph page in the designated caregiver's U.S. passport or a U.S. passport card; and

8. The applicable fees in R9-17-102 for applying to:

a. Renew a qualifying patient's registry identification card; and

b. If applicable, issue or renew a designated caregiver's registry identification card.

B. To renew a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:

1. An application in a Department-provided format that includes:

a. The qualifying patient's:

i. First name; middle initial, if applicable; last name; and suffix, if applicable; and

ii. Date of birth;

b. The qualifying patient's Arizona residence address and Arizona mailing address;

c. The county where the qualifying patient resides;

d. The registry identification number on the qualifying patient's current registry identification card;

e. The qualifying patient's custodial parent's or legal guardian's first name; middle

initial, if applicable; last name; and suffix, if applicable;

f. The qualifying patient's custodial parent's or legal guardian's Arizona residence address and Arizona mailing address;

g. The county where the qualifying patient's custodial parent or legal guardian resides;

h. The qualifying patient's custodial parent's or legal guardian's e-mail address;

i. The registry identification number on the qualifying patient's custodial parent's or legal guardian's current registry identification card;

j. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;

k. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the qualifying patient's medical record maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;

l. Whether the qualifying patient's custodial parent or legal guardian is requesting approval for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;

m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;

n. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:

   i. Allowing the qualifying patient's medical use of marijuana;

   ii. Agreeing to assist the qualifying patient with the medical use of marijuana; and

   iii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

o. An attestation that the information provided in the application is true and correct; and

p. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;

2. If the qualifying patient's custodial parent's or legal guardian's name in subsection (B)(1)(e) is not the same name as on the qualifying patient's custodial parent's or legal guardian's current registry identification card, one of the following with the custodial parent's or legal guardian's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the qualifying patient's custodial parent's or legal guardian's U.S. passport or a U.S. passport card;
3. A current photograph of the qualifying patient;
4. A written certification from the physician in subsection (B)(1)(j) and a separate written certification from the physician in subsection (B)(1)(k) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:
   a. The physician's:
      i. Name,
      ii. License number including an identification of the physician license type,
      iii. Office address on file with the physician's licensing board,
      iv. Telephone number on file with the physician's licensing board, and
      v. E-mail address;
   b. The qualifying patient's name and date of birth;
   c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
   d. If the debilitating medical condition identified in subsection (B)(4)(c) is a condition in:
      i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
      ii. R9-17-201(14), the debilitating medical condition;
   e. For the physician listed in subsection (B)(1)(j):
      i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
      ii. A statement, initialed by the physician, that the physician:

(1) Has established a medical record for the qualifying patient, and

(2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;

iii. A statement, initialed by the physician, that the physician has conducted ~~an in-person~~ a physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;

iv. The date the physician conducted the ~~in-person~~ physical examination of the qualifying patient;

v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:

(1) Medical records including medical records from other treating physicians from the previous 12 months,

(2) Response to conventional medications and medical therapies, and

(3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;

vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and

vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:

(1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and

(2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;

f. For the physician listed in subsection (B)(1)(k), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;

g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;

h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient's custodial parent or legal guardian any personal or professional relationship the physician has with the dispensary;

i. An attestation that the information provided in the written certification is true and correct; and

j. The physician's signature and the date the physician signed; and

5. A current photograph of the qualifying patient's custodial parent or legal guardian;

6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:

a. The qualifying patient's custodial parent's or legal guardian's fingerprints on a fingerprint card that includes:

i. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; and last name;

ii. The qualifying patient's custodial parent's or legal guardian's signature;

iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;

iv. The qualifying patient's custodial parent's or legal guardian's address;

v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;

vi. The qualifying patient's custodial parent's or legal guardian's date of birth;

vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;

viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;

ix. The qualifying patient's custodial parent's or legal guardian's gender;

x. The qualifying patient's custodial parent's or legal guardian's race;

xi. The qualifying patient's custodial parent's or legal guardian's height;

xii. The qualifying patient's custodial parent's or legal guardian's weight;

xiii. The qualifying patient's custodial parent's or legal guardian's hair color;

xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and

xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or

b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (B)(6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver as a result of the application; or

c. Documentation that the custodial parent or legal guardian has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

7. The applicable fees in R9-17-102 for applying to renew a:

a. Qualifying patient's registry identification card, and

b. Designated caregiver's registry identification card.

C. Except as provided in subsection (A)(6), to renew a qualifying patient's designated caregiver's registry identification card, the qualifying patient shall submit to the Department, at least 30 calendar days before the expiration date of the designated caregiver's registry identification card, the following:

1. An application in a Department-provided format that includes:

a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;

b. The registry identification number on the qualifying patient's current registry identification card;

c. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;

d. The designated caregiver's date of birth;

e. The designated caregiver's Arizona residence address and Arizona mailing address;

f. The county where the designated caregiver resides;

g. The registry identification number on the designated caregiver's current registry identification card;

2. If the designated caregiver's name in subsection (C)(1)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:

a. An Arizona driver's license,

b. An Arizona identification card, or

c. The photograph page in the designated caregiver's U.S. passport or a U.S. passport card;

3. A current photograph of the designated caregiver;

4. A statement in a Department-provided format signed by the designated caregiver:

a. Agreeing to assist the qualifying patient with the medical use of marijuana; and

b. Pledging not to divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and

5. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:

a. The designated caregiver's fingerprints on a fingerprint card that includes:

i. The designated caregiver's first name; middle initial, if applicable; and last name;

ii. The designated caregiver's signature;

iii. If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;

iv. The designated caregiver's address;

v. If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;

vi. The designated caregiver's date of birth;

vii. The designated caregiver's Social Security number;

viii. The designated caregiver's citizenship status;

ix. The designated caregiver's gender;

x. The designated caregiver's race;

xi. The designated caregiver's height;

xii. The designated caregiver's weight;

xiii. The designated caregiver's hair color;

xiv. The designated caregiver's eye color; and

xv. The designated caregiver's place of birth; or

b. If the designated caregiver's fingerprints and information required in subsection (C)(1)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; or

c. Documentation that the designated caregiver has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

6. The applicable fee in R9-17-102 for renewing a designated caregiver's registry identification card.

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-305. Applying for Approval to Operate a Dispensary

A. To apply for approval to operate a dispensary, a person holding a dispensary registration certificate shall submit to the Department, and, if the dispensary registration certificate was issued on or after April 1, 2020, within 18 months after the dispensary registration certificate was issued, the following:

1. ~~An application~~ The following information in a Department-provided format ~~that includes~~:
    a. The name and registry identification number of the dispensary;
    b. The physical address of the dispensary;
    c. The name, address, and date of birth of each dispensary agent;
    d. Except as provided in R9-17-324, the name and professional license number of the dispensary's medical director;
    e. If applicable, the physical address of the dispensary's cultivation site;
    f. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
    g. The dispensary's proposed hours of operation during which the dispensary plans to be available to dispense medical marijuana to qualifying patients and designated caregivers;
    h. Whether the dispensary plans to:
        i. Cultivate marijuana;
        ii. Manufacture marijuana products;
        iii. Prepare marijuana-infused edible food products; or
        iv. Sell or dispense marijuana-infused edible food products that are either:
            (1) A time/temperature control for safety food, or
            (2) Not prepared in individually packaged containers;
    i. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
    j. Whether the dispensary and, if applicable, the dispensary's cultivation site are ready for an inspection by the Department;
    k. If the dispensary and, if applicable, the dispensary's cultivation site are not ready for an inspection by the Department, the date the dispensary and, if applicable, the dispensary's cultivation site will be ready for an inspection by the Department;

l. An attestation that the information provided to the Department to apply for approval to operate a dispensary is true and correct; and

m. The signatures of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;

2. A copy of the dispensary's license or permit of the location as a food establishment, issued under 9 A.A.C. 8, Article 1, if the dispensary plans to:

a. Prepare marijuana-infused edible food products, as specified in subsection (A)(1)(h)(iii); or

b. Sell or dispense marijuana-infused edible food products, as specified in subsection (A)(1)(h)(iv);

3. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the building as a dispensary and, if applicable, as the dispensary's cultivation site, such as a certificate of occupancy, a special use permit, or a conditional use permit;

4. The distance to the closest private school or public school from:

a. The dispensary; and

b. If applicable, the dispensary's cultivation site;

5. A site plan drawn to scale of the dispensary location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;

6. A floor plan drawn to scale of the building where the dispensary is located showing the:

a. Layout and dimensions of each room,

b. Name and function of each room,

c. Location of each hand washing sink,

d. Location of each toilet room,

e. Means of egress,

f. Location of each video camera,

g. Location of each panic button, and

h. Location of natural and artificial lighting sources;

7. If applicable, a site plan drawn to scale of the dispensary's cultivation site showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and

8. If applicable, a floor plan drawn to scale of each building at the dispensary's cultivation

site showing the:

a. Layout and dimensions of each room,

b. Name and function of each room,

c. Location of each hand washing sink,

d. Location of each toilet room,

e. Means of egress,

f. Location of each video camera,

g. Location of each panic button, and

h. Location of natural and artificial lighting sources.

B. A dispensary's cultivation site may be located anywhere in the state where a cultivation site is allowed by the local jurisdiction.

R9-17-307. Applying to Change a Dispensary Registration Certificate

A. A dispensary shall submit a separate application to the Department for each request for one of the possible changes in R9-17-306(C).

B. To request any of the changes specified in R9-17-306(C), a dispensary shall submit to the Department:

1. The following information in a Department-provided format:
    a. The legal name of the dispensary;
    b. The registry identification number for the dispensary;
    c. Whether the request is for:
        i. A change of location for the dispensary,
        ii. A change of location for the dispensary's cultivation site,
        iii. An addition of a cultivation site, or
        iv. A change in the activities conducted at a current location;
    d. The current physical address of the dispensary or the dispensary's cultivation site;
    e. The physical address of the proposed location for the dispensary or the dispensary's cultivation site, if applicable;
    f. For a change of location or an addition of a cultivation site, the distance to the closest public school or private school from:
        i. The proposed location for the dispensary, or
        ii. The proposed location for the dispensary's cultivation site;
    g. For a request to change activities conducted at a current location or include any of the following activities at a new location, whether the dispensary plans to:
        i. Cultivate marijuana;

ii. Manufacture marijuana products;

iii. Prepare marijuana-infused edible food products; or

iv. Sell or dispense marijuana-infused edible food products that are either:

(1) A time/temperature control for safety food, or

(2) Not prepared in individually packaged containers;

h. The name of the entity applying;

i. If applicable, the anticipated date of the change of location or activities;

j. Whether the proposed dispensary, the dispensary's proposed cultivation site, or the location of the change in activities is ready for an inspection by the Department;

k. If the proposed dispensary, the dispensary's proposed cultivation site, or the location of the change in activities is not ready for an inspection by the Department, the date the dispensary, the dispensary's proposed cultivation site, or the location of the change in activities will be ready for an inspection by the Department;

l. An attestation that the information provided to the Department to apply for a change in location is true and correct; and

m. The signature of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;

2. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the proposed building as a dispensary or location as the dispensary's cultivation site for the activities to be conducted at the location, such as a certificate of occupancy, a special use permit, or a conditional use permit;

3. A copy of the dispensary's license or permit of the location as a food establishment, issued under 9 A.A.C. 8, Article 1, if the dispensary plans to:

a. Prepare marijuana-infused edible food products, as specified in subsection (B)(1)(g)(iii); or

b. Sell or dispense marijuana-infused edible food products, as specified in subsection (B)(1)(g)(iv);

4. A copy of documentation, in a Department-provided format, of:

a. Ownership of the physical address of the proposed dispensary, proposed cultivation site, or location for the change in activities, signed and dated within 60 calendar days before the date of the request; or

b. Permission from the owner of the physical address of the proposed dispensary, proposed cultivation site, or location for the change in activities, for the dispensary to operate a dispensary or conduct the specified activities at the

physical address, signed, notarized, and dated within 60 calendar days before the date of the request;

5. ~~If the~~ For a change in location ~~is for~~ of the dispensary, including when any of the activities specified according to subsection (B)(1)(g) is to be conducted at the new location:
    a. A site plan drawn to scale of the proposed dispensary location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
    b. A floor plan drawn to scale of the building where the proposed dispensary is located showing the:
        i. Layout and dimensions of each room~~.~~;
        ii. Name and function of each room~~.~~;
        iii. Location of each hand washing sink~~.~~;
        iv. If applicable, location of each piece of fixed equipment required to conduct the activity;
        ~~iv.~~v. Location of each toilet room~~.~~;
        ~~v.~~vi. Means of egress~~.~~;
        ~~vi.~~vii. Location of each video camera~~.~~;
        ~~vii.~~viii. Location of each panic button~~.~~; and
        ~~viii.~~ix. Location of natural and artificial lighting sources;
6. ~~If the~~ For a change in location ~~is for~~ of the dispensary's cultivation site or ~~if~~ for adding a cultivation site, including when any of the activities specified according to subsection (B)(1)(g) is to be conducted at the new or added cultivation site:
    a. A site plan drawn to scale of the dispensary's proposed cultivation site showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
    b. If applicable, a floor plan drawn to scale of each building used by the dispensary's proposed cultivation site showing the:
        i. Layout and dimensions of each room~~.~~;
        ii. Name and function of each room~~.~~;
        iii. Location of each hand washing sink~~.~~;
        iv. If applicable, location of each piece of fixed equipment required to conduct the activity;

~~iv.~~v. Location of each toilet room~~.~~;

~~v.~~vi. Means of egress~~.~~;

~~vi.~~vii. Location of each video camera~~.~~;

~~vii.~~viii. Location of each panic button~~.~~; and

~~viii.~~ix. Location of natural and artificial lighting sources;

7. For changing an activity conducted at a current location, a floor plan drawn to scale of the building where the activity will occur showing the:

a. Layout and dimensions of each room,

b. Name and function of each room,

c. Location of each hand washing sink,

d. Location of each piece of fixed equipment required to conduct the activity,

e. Means of egress,

f. Location of each video camera,

g. Location of each panic button, and

h. Location of natural and artificial lighting sources; and

~~7.~~8. The applicable fee in R9-17-102 for applying for a change in location or the addition of a cultivation site, or to change activities conducted at a current location or add activities at a new location.

C. If the information and documents submitted by the dispensary comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue an amended dispensary registration certificate that includes the new address of the new location or the new activities and retains the expiration date of the previously issued dispensary registration certificate.

D. An application for a change in location of a dispensary or a dispensary's cultivation site or the addition of a cultivation site may not be combined with an application for renewing a dispensary registration certificate. The Department shall process each application separately according to the applicable time-frame established in R9-17-107.

E. A dispensary shall submit written notification to the Department when the dispensary no longer uses a previously approved cultivation site.

R9-17-308. Renewing a Dispensary Registration Certificate

To renew a dispensary registration certificate, a dispensary that has an approval to operate a dispensary issued by the Department, shall submit to the Department, at least 30 calendar days before the expiration date of the dispensary's current dispensary registration certificate, the following:

1. An application in a Department-provided format that includes:

a. The legal name of the dispensary;

b. The registry identification number for the dispensary;

c. If the dispensary is a dual licensee, the marijuana establishment license number;

d. The physical address of the dispensary;

e. The name of the entity applying;

f. Except as provided in ~~R9-17-324(D)~~ R9-17-324(C), the name and license number of the dispensary's medical director;

g. The dispensary's hours of operation during which the dispensary is available to dispense medical marijuana to qualifying patients and designated caregivers;

h. The name, address, date of birth, and registry identification number of each:

i. Principal officer,

ii. Board member, and

iii. Dispensary agent;

i. For each principal officer or board member, whether the principal officer or board member:

i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked,

ii. Has served as a principal officer or board member for a marijuana establishment that had the marijuana establishment license revoked, or

iii. Is a physician currently providing written certifications for qualifying patients;

j. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;

k. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;

l. An attestation that the information provided to the Department to renew the dispensary registration certificate is true and correct; and

m. The signature of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;

2. Either:

a. An attestation, in a Department-provided format, that the dispensary is operating on a not-for-profit basis; or

b. Both of the following:

i. A copy of an annual financial statement for the previous two years, or for the portion of the previous two years the dispensary was operational,

prepared according to generally accepted accounting principles; and

ii. A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (2)(b)(i); and

3. The applicable fee in R9-17-102 for applying to renew a dispensary registration certificate.

R9-17-309. Inspections

A. Submission of an application for a dispensary registration certificate constitutes permission for entry to and inspection of the dispensary and, if applicable, the dispensary's cultivation site.

~~**B.** Except as provided in subsection (D), an onsite inspection of a dispensary or the dispensary's cultivation site shall occur at a date and time agreed to by the dispensary and the Department that is no later than five working days after the date the Department submits a written request to the dispensary to schedule the certification or compliance inspection, unless the Department agrees to a later date and time.~~

~~**C.**~~**B.** The Department shall not accept allegations of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.

~~**D.**~~**C.** If the Department receives an allegation of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an ~~unannounced~~ inspection of the dispensary or the dispensary's cultivation site.

~~**E.**~~**D.** If the Department identifies a violation of A.R.S. Title 36, Chapter 28.1 or this Chapter during an inspection of a dispensary or the dispensary's cultivation site:

1. The Department shall provide the dispensary with a written notice that includes the specific rule or statute that was violated; and
2. The dispensary shall notify the Department in writing, with a postmark date within 20 working days after the date of the notice of violations, identifying the corrective actions taken and the date of the correction.

R9-17-310. Administration

A. A dispensary shall:

1. Ensure that the dispensary is operating and available to dispense medical marijuana and marijuana products to qualifying patients and designated caregivers:
   a. At least 30 hours weekly between the hours of 7:00 a.m. and 10:00 p.m.; and
   b. For a dispensary with a dispensary registration certificate issued on or after April 1, 2020:
      i. At the location specified according to R9-17-304(C)(1)(b), and
      ii. Within 18 months after receiving the dispensary registration certificate;

2. Develop, document, and implement policies and procedures regarding:
    a. Job descriptions and employment contracts, including:
        i. Personnel duties, authority, responsibilities, and qualifications;
        ii. Personnel supervision;
        iii. Training in and adherence to confidentiality requirements;
        iv. Periodic performance evaluations; and
        v. Disciplinary actions;
    b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
    c. Inventory control, including:
        i. Tracking;
        ii. Packaging;
        iii. Accepting marijuana from qualifying patients and designated caregivers;
        iv. Acquiring marijuana or marijuana products from a marijuana establishment or ~~other dispensaries~~ another dispensary;
        v. Providing marijuana or marijuana products to a marijuana establishment or another dispensary; and
        vi. Either:
            (1) Providing samples of marijuana or marijuana products to a laboratory for testing, or
            (2) Allowing a laboratory agent access to medical marijuana or marijuana product to collect samples;
    d. Laboratory testing, including:
        i. The analytes, including possible contaminants, to be tested for;
        ii. The process for separating a batch of marijuana or of a marijuana product until laboratory testing has been completed and testing results received by the dispensary;
        iii. The process for collecting samples of medical marijuana or a marijuana product for laboratory testing, including:
            (1) The amount to be collected from each batch,
            (2) The method for ensuring that a sample collected is representative of the batch,
            (3) The packaging of the sample,

(4) The method for documenting chain of custody for the sample, and

(5) Methods to deter tampering with the sample and to determine whether tampering has occurred;

~~vi.~~iv. The process for submitting a sample of medical marijuana or a marijuana product to a laboratory agent or laboratory for testing, including specifying the analytes to be tested for consistent with R9-17-317.01(A);

v. The process for requesting retesting of the remaining portion of a sample of medical marijuana or a marijuana product; and

vi. Actions to be taken on the basis of laboratory testing results;

e. Remediation, including:

i. Criteria for when a batch of medical marijuana or marijuana product can be remediated;

ii. The process by which each type of medical marijuana or marijuana product is remediated, including the methods for remediation and subsequent retesting; and

iii. Documentation of the remediation process;

f. Disposal of medical marijuana or a marijuana product, including:

i. Destroying a batch of marijuana or a marijuana product that does not meet the requirements in Table 3.1 and documenting the destruction;

ii. Submitting marijuana that is not usable marijuana to a local law enforcement agency and documenting the submission; or

iii. Otherwise disposing of marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting the method of disposal, the ~~laboratory~~ dispensary agent overseeing the disposal, and the date of disposal;

g. Qualifying patient records, including purchases, denials of sale, any delivery options, confidentiality, and retention; and

h. Patient education and support, including the development and distribution of materials on:

i. Availability of different strains of marijuana and the purported effects of the different strains;

ii. Information about the purported effectiveness of various methods, forms, and routes of medical marijuana administration;

iii. Information about laboratory testing, the analytes for which the dispensary receives testing results, the right to receive a copy of the final report of testing specified in R9-17-404.06 upon request, and how to read and understand the final report of testing;

iv. Methods of tracking the effects on a qualifying patient of different strains and forms of marijuana; and

v. Prohibition on the smoking of medical marijuana in public places;

3. Maintain copies of the policies and procedures at the dispensary and provide copies to the Department for review upon request;

4. Maintain at the dispensary current and valid documentation of any certificate or permit issued by a local jurisdiction related to the operation of the dispensary or the dispensary's cultivation site and provide copies to the Department for review upon request;

~~4.~~5. Review dispensary policies and procedures at least once every 12 months from the issue date of the dispensary registration certificate and update as needed;

~~5.~~6. Except as provided in ~~R9-17-324(D)~~ R9-17-324(C), employ or contract with a medical director;

~~6.~~7. Ensure that each dispensary agent or marijuana facility agent associated with the dispensary has the applicable registry identification card or marijuana facility agent license in the dispensary agent's or marijuana facility agent's immediate possession when the dispensary agent or marijuana facility agent is:

a. Working or providing volunteer services at the dispensary or the dispensary's cultivation site, or

b. Transporting marijuana for the dispensary;

~~7.~~8. ~~Except as provided in R9-17-324(C), ensure~~ Ensure that a dispensary agent or marijuana facility agent associated with the dispensary accompanies any individual other than another dispensary agent or marijuana facility agent associated with the dispensary when the individual is present in the enclosed, locked facility where marijuana is cultivated by the dispensary;

~~8.~~9. Not allow an individual who does not possess a dispensary agent registry identification card issued under the dispensary registration certificate or marijuana facility agent license associated with the dispensary to:

a. Serve as a principal officer or board member for the dispensary,

b. Serve as the medical director for the dispensary,

c. Be employed by the dispensary, or

d. Provide volunteer services at or on behalf of the dispensary;

~~9.~~10. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a dispensary agent or marijuana facility agent associated with the dispensary no longer:

a. Serves as a principal officer or board member for the dispensary,

b. Serves as the medical director for the dispensary,

c. Is employed by the dispensary, or

d. Provides volunteer services at or on behalf of the dispensary;

~~10.~~11. Document and report any loss or theft of marijuana from the dispensary or the dispensary's cultivation site to the appropriate law enforcement agency;

~~11.~~12. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request;

~~12.~~13. Post the following information in a place that can be viewed by individuals entering the dispensary:

a. If applicable, the dispensary's approval to operate;

b. The dispensary's registration certificate;

c. Except as provided in ~~R9-17-324(D)~~ R9-17-324(C), the name of the dispensary's medical director and the medical director's professional license number on a sign at least 20 centimeters by 30 centimeters;

d. The hours of operation during which the dispensary will dispense medical marijuana to a qualifying patient or a designated caregiver;

e. A sign in a Department-provided format that contains the following language:

i. "WARNING: There may be potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding," and

ii. "WARNING: Use of marijuana during pregnancy may result in a risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;" and

f. A sign stating that a qualifying patient has the right to receive the results of laboratory testing of medical marijuana or a marijuana product; and

~~13.~~14. Except as provided in ~~R9-17-324(D)~~ R9-17-324(C):

a. Not lend any part of the dispensary's income or property without receiving adequate security and a reasonable rate of interest,

b. Not purchase property for more than adequate consideration in money or cash equivalent,

c. Not pay compensation for salaries or other compensation for personal services that is in excess of a reasonable allowance,

d. Not sell any part of the dispensary's property or equipment for less than adequate consideration in money or cash equivalent, and

e. Not engage in any other transaction that results in a substantial diversion of the dispensary's income or property.

B. If a dispensary cultivates marijuana, the dispensary shall cultivate the marijuana in an enclosed, locked facility.

R9-17-313. Medical Director

A. Except as provided in ~~R9-17-324(D)~~ R9-17-324(C), a dispensary shall appoint an individual who is a physician to function as a medical director.

B. During a dispensary's hours of operation, a medical director or an individual who is a physician and is designated by the medical director to serve as medical director in the medical director's absence is:

1. Onsite; or
2. Able to be contacted by any means possible, such as by telephone or pager.

C. A medical director shall:

1. Develop and provide training to the dispensary's dispensary agents at least once every 12 months from the initial date of the dispensary's registration certificate on the following subjects:
   a. Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;
   b. Guidelines for providing support to qualifying patients related to the qualifying patient's self-assessment of the qualifying patient's symptoms, including a rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, and agitation;
   c. Recognizing signs and symptoms of substance abuse; and
   d. Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and
2. Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary.

D. A medical director shall provide oversight for the development and dissemination of:

1. Educational materials for qualifying patients and designated caregivers that include:
    a. Alternative medical options for the qualifying patient's debilitating medical condition;
    b. Information about possible side effects of and contraindications for medical marijuana including possible impairment with use and operation of a motor vehicle or heavy machinery, when caring for children, or of job performance;
    c. Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;
    d. A description of the potential for differing strengths of medical marijuana strains and products;
    e. Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, non-prescription drugs, and supplements;
    f. Techniques for the use of medical marijuana and marijuana paraphernalia;
    g. Information about different methods, forms, and routes of medical marijuana administration;
    h. Signs and symptoms of substance abuse, including tolerance, dependency, and withdrawal; and
    i. A listing of substance abuse programs and referral information;
2. A system for a qualifying patient or the qualifying patient's designated caregiver to document the qualifying patient's pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, or agitation that includes:
    a. A log book, maintained by the qualifying patient and or the qualifying patient's designated caregiver, in which the qualifying patient or the qualifying patient's designated caregiver may track the use and effects of specific medical marijuana strains and products;
    b. A rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscles spasms, and agitation;
    c. Guidelines for the qualifying patient's self-assessment or, if applicable, assessment of the qualifying patient by the qualifying patient's designated caregiver; and
    d. Guidelines for reporting usage and symptoms to the physician providing the written certification for medical marijuana and any other treating physicians; and
3. Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana.

E. A medical director for a dispensary shall not provide a written certification for medical marijuana for any qualifying patient.

R9-17-316. Inventory Control System

A. A dispensary shall designate in writing a dispensary agent or marijuana facility agent associated with the dispensary who has oversight of the dispensary's medical marijuana inventory control system.

B. A dispensary shall only acquire marijuana from:

1. The dispensary's cultivation site,
2. Another dispensary or another dispensary's cultivation site,
3. A marijuana establishment licensed under 9 A.A.C. 18,
4. A qualifying patient authorized by the Department to cultivate marijuana, or
5. A designated caregiver authorized by the Department to cultivate marijuana.

C. A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana and marijuana products that documents:

1. The following amounts:
    a. Each day's beginning inventory of medical marijuana and marijuana products,
    b. Acquisitions according to subsection (B),
    c. Medical marijuana harvested by the dispensary,
    d. Medical marijuana and marijuana products provided to a marijuana establishment or another dispensary,
    e. Medical marijuana and marijuana products dispensed to a qualifying patient or designated caregiver,
    f. Medical marijuana and marijuana products submitted to a laboratory for testing according to R9-17-317.01,
    g. Medical marijuana or marijuana products that were disposed of, and
    h. The day's ending medical marijuana and marijuana products inventory;
2. For acquiring medical marijuana from a qualifying patient or designated caregiver:
    a. A description of the medical marijuana acquired including the amount and strain,
    b. The name and registry identification number of the qualifying patient or designated caregiver who provided the medical marijuana,
    c. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent receiving the medical marijuana on behalf of the dispensary, and
    d. The date of acquisition;

3. For acquiring medical marijuana or a marijuana product from another dispensary or a marijuana establishment:
    a. A description of the medical marijuana or marijuana product acquired including:
        i. The amount, batch number, and strain of the medical marijuana or marijuana product;
        ii. For a marijuana product, the ingredients in order of abundance; and
        iii. For an edible ~~marijuana~~ food product infused with medical marijuana or a marijuana product:
            (1) The date of manufacture,
            (2) The total weight of the marijuana-infused edible ~~marijuana~~ food product, and
            (3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible ~~marijuana~~ food product;
    b. As applicable, either:
        i. The name and registry identification number of the dispensary providing the medical marijuana or marijuana product, or
        ii. The name and license number of the marijuana establishment providing the medical marijuana or marijuana product;
    c. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent providing the medical marijuana or marijuana product;
    d. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent receiving the medical marijuana or marijuana product on behalf of the dispensary; and
    e. The date of acquisition;
4. For each batch of marijuana cultivated:
    a. The batch number;
    b. Whether the batch originated from marijuana seeds or marijuana cuttings;
    c. The origin and strain of the marijuana seeds or marijuana cuttings planted;
    d. The number of marijuana seeds or marijuana cuttings planted;
    e. The date the marijuana seeds or cuttings were planted;
    f. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers used in the cultivation;

g. The number of plants grown to maturity; and

h. Harvest information including:

i. Date of harvest,

ii. Final ~~processed~~ usable marijuana yield weight, and

iii. Name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent responsible for the harvest;

5. For providing medical marijuana or a marijuana product to another dispensary or a marijuana establishment:

a. A description of the medical marijuana or marijuana product provided including:

i. The amount, batch number, and strain of the medical marijuana or marijuana product;

ii. For a marijuana product, the ingredients in order of abundance; and

iii. For an edible ~~marijuana~~ food product infused with medical marijuana or a marijuana product:

(1) The date of manufacture,

(2) The total weight of the marijuana-infused edible ~~marijuana~~ food product, and

(3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible ~~marijuana~~ food product;

b. The name and registry identification number or marijuana establishment license number, as applicable, of the other dispensary or the marijuana establishment;

c. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent who received the medical marijuana or marijuana product on behalf of the other dispensary or the marijuana establishment; and

d. The date the medical marijuana or marijuana product was provided;

6. For submitting marijuana or marijuana products to a laboratory agent or laboratory for testing:

a. The amount, strain, and batch number of the marijuana or marijuana product submitted;

b. The name and registry identification number of the laboratory;

c. The name and registry identification number of the laboratory agent who

received the marijuana or marijuana product on behalf of the laboratory; and

d. The date the marijuana or marijuana product was submitted to the laboratory; and

7. For disposal of medical marijuana or a marijuana product that is not to be dispensed or used for making a marijuana product:

a. Description of and reason for the medical marijuana or marijuana product being disposed of including, if applicable:

i. The number of failed or other unusable plants, and

ii. The results of laboratory testing;

b. Date of disposal;

c. Method of disposal; and

d. Name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent responsible for the disposal.

D. The individual designated in subsection (A) shall conduct and document an audit of the dispensary's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.

1. If the audit identifies a reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory not due to documented causes, the dispensary shall determine and document where the loss has occurred and take and document corrective action.

2. If the reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory is due to suspected criminal activity by a dispensary agent or marijuana facility agent, the dispensary shall report the dispensary agent or marijuana facility agent to the Department and to the local law enforcement authorities.

E. A dispensary shall:

1. Maintain the documentation required in subsections (C) and (D) at the dispensary for at least five years after the date on the document, and

2. Provide the documentation required in subsections (C) and(D) to the Department for review upon request.

R9-17-317. Product Labeling <u>and Packaging</u>

A. A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is labeled with:

1. The dispensary's registry identification number;
2. The amount, strain, and batch number of the medical marijuana or marijuana product;
3. The form of the medical marijuana or marijuana product;

4. As applicable, the weight of the medical marijuana or marijuana product;
5. In compliance with Table 3.1, the potency of the medical marijuana or marijuana product, based on laboratory testing results, including the number of milligrams per designated unit or percentage of:
    a. Total tetrahydrocannabinol, reported according to R9-17-404.03(S)(2)(a);
    b. Total cannabidiol, reported according to R9-17-404.03(S)(2)(b); and
    c. Any other cannabinoid for which the dispensary is making a claim related to the effect of the cannabinoid on the human body;
6. The following statement: "ARIZONA DEPARTMENT OF HEALTH SERVICES' WARNING: Marijuana use can be addictive and can impair an individual's ability to drive a motor vehicle or operate heavy machinery. Marijuana smoke contains carcinogens and can lead to an increased risk for cancer, tachycardia, hypertension, heart attack, and lung infection. Marijuana use may affect the health of a pregnant woman and the unborn child. KEEP OUT OF REACH OF CHILDREN";
7. If not cultivated by the dispensary, whether the medical marijuana was obtained from a qualifying patient, a designated caregiver, a marijuana establishment, or another dispensary;
8. If not infused or prepared for sale by the dispensary, whether the marijuana product was obtained from a marijuana establishment or another dispensary;
9. For a marijuana product:
    a. The ingredients in order of abundance; and
    b. If the marijuana product contains ethanol, the percentage of ethanol in the marijuana product;
10. The date of manufacture, harvest, or sale; and
11. The registry identification number of the qualifying patient.

B. If a dispensary provides medical marijuana cultivated, or a marijuana product infused or prepared for sale, by the dispensary to a marijuana establishment or another dispensary, the dispensary shall ensure that:

1. The medical marijuana or marijuana product is labeled with:
    a. The dispensary's registry identification number or marijuana establishment's license number, as applicable;
    b. The amount, strain, and batch number of the medical marijuana or marijuana product; and
    c. The date of harvest or sale; and

2. A copy of laboratory testing results for the medical marijuana or marijuana product is provided to the receiving dispensary or marijuana establishment.

C. A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is dispensed in a container made of material that will not react with or leach into the medical marijuana or marijuana product.

~~C.~~D. A dispensary shall ensure that medical marijuana or a marijuana product being submitted to a laboratory for testing is labelled according to requirements in R9-17-317.01(B)(5).

R9-17-317.01. Analysis of Medical Marijuana or a Marijuana Product

A. Before offering a batch of medical marijuana or of a marijuana product for sale or dispensing to a qualifying patient or designated caregiver, a dispensary shall ensure that:

1. Except as provided in subsection (A)(2) or (3), each batch of medical marijuana or marijuana product is tested in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1;
2. Each batch of a marijuana product is tested according to requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 for, as applicable:
    a. At least potency and microbial contaminants other than mycotoxins if the marijuana product was prepared from another marijuana product, such as a concentrate or tincture, that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, using none of the following:
        i. A temperature above which any analyte could chemically decompose or react with a component of the marijuana product;
        ii. A pressure above which any analyte could chemically decompose or react with a component of the marijuana product;
        iii. A process by which any analyte in the marijuana product that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 may be further concentrated; or
        iv. A solvent other than water; or
    b. All analytes except:
        i. ~~ethanol~~ Ethanol if the marijuana product is intended to contain ethanol; or
        ii. For a marijuana product intended for topical application, isopropanol if the marijuana product is intended to contain isopropanol; and
3. If the results of testing of the dispensary's medical marijuana and marijuana products for heavy metals, according to R9-17-404.03, indicate that the medical marijuana and

marijuana products are in compliance with Table 3.1 for a period of at least six consecutive months:

a. Each batch of medical marijuana or a marijuana product is tested according to requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 for all analytes except heavy metals; and

b. At least once every three months, each batch of medical marijuana or a marijuana product is tested according to requirements in R9-17-404.03 and Table 3.1 for heavy metals.

B. A dispensary shall ensure that:

1. Until laboratory testing has been completed and testing results received by the dispensary that comply with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, a batch of marijuana or of a marijuana product is stored in a location away from medical marijuana and marijuana products offered for dispensing;
2. Except as provided in subsection (D), only one sample of each batch of medical marijuana or marijuana product is collected according to ANSI/ASQ Standard Z1.4 (2018), General Inspection Level II, incorporated by reference, including no future editions, and available at https://asq.org/quality-resources/z14-z19, including:
   a. Use, as applicable, of one of the following sampling methods:
      i. Top, middle, and bottom sampling using a sample thief, a device consisting of two nested tubes with one or more aligned slots through which a sample may be collected and then sealed into the inner tube by rotating the outer tube;
      ii. Star pattern sampling from the top, middle, and bottom of each storage container;
      iii. Collecting discrete incremental units of a batch, such as every tenth unit or every twentieth drop; or
      iv. Quartering until the sample reaches the size specified in subsection (B)(3); and
   b. For sampling methods specified in subsections (B)(2)(a)(i) through (iii), quartering the volume of the aggregated portions collected to obtain the sample size specified in subsection (B)(3);
3. The size of the sample provided to a laboratory is sufficient for testing and, if necessary, retesting;
4. Each sample in subsection (B)(3) is packaged in a container made of:

a. The same material that would be used for dispensing, or

b. Another material that will not react with or leach into the sample;

5. Each packaged sample is labeled with the:

a. The dispensary's registry identification number;

b. The amount, strain, and batch number of the medical marijuana or marijuana product;

c. The analytes for which testing is being requested;

~~c.~~d. The storage temperature for the marijuana or marijuana product; and

~~d.~~e. The date of sampling;

6. A packaged sample in subsection (B)(4) is submitted to a laboratory that:

a. Has a laboratory registration certificate issued by the Department, and

b. Is approved for testing by the Department for an analyte for which testing is being requested;

7. Except as specified in subsections (A)(2) and (3) and (C)(1) ~~or (3)(b)~~, as applicable, the samples in subsection (B)(4) are tested for each analyte specified in Table 3.1 by a laboratory that is approved by the Department for testing the analyte;

8. Only batches of marijuana or marijuana products for which laboratory testing results in subsection (B)(7) are in compliance with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 are offered for sale or dispensing; and

9. Except as provided in subsection (C), any batch of marijuana or marijuana product that does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 is remediated, if applicable, or destroyed according to policies and procedures.

C. If a dispensary receives a final report of testing, specified in R9-17-404.06(B)(3), from a laboratory that indicates that a batch of medical marijuana or marijuana product does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, the dispensary:

1. Within seven days after receiving the final report of testing, may request retesting of the remaining portion of the sample in subsection (B)(4) for all analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 by ~~a second, independent laboratory~~ no more than two other laboratories that are independent of a laboratory conducting a test included in the final report of testing and that ~~is~~ are approved by the Department for testing the analytes;

2. If the final report of testing conducted according to subsection (C)(1) from ~~the second~~ another, independent laboratory indicates that any analyte tested for according to subsection (C)(1) does not comply with the requirements in R9-17-404.03, R9-17-404.04,

and Table 3.1, shall remediate, if applicable, or destroy the batch of medical marijuana or marijuana product according to policies and procedures; and

3. If the final report of testing from ~~the second,~~ each of the two other independent ~~laboratory~~ laboratories, allowed according to subsection (C)(1), indicates that all analytes tested for according to subsection (C)(1) comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1~~:~~

~~a. Shall ensure that the batch of medical marijuana or marijuana product is not offered for sale or dispensing; and~~

~~b. May request retesting of the remaining portion of the sample in subsection (B)(4) for the analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 by a third, independent laboratory that is approved by the Department for testing the analytes; and~~

~~4. If the dispensary requested retesting of the remaining portion of the sample in subsection (B)(4) for an analyte by a third, independent laboratory according to subsection (C)(3)(b):~~

~~a. If the final report of testing from the third, independent laboratory indicates that the analyte tested for according to subsection (C)(3) complies with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1~~, may offer the batch of medical marijuana or marijuana product for sale or dispensing~~; and~~

~~b. If the final report of testing from the third, independent laboratory indicates that an analyte tested for according to subsection (C)(3) does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, shall remediate, if applicable, or destroy the batch of medical marijuana or marijuana product according to policies and procedures~~.

D. A dispensary may request retesting of a batch of medical marijuana or marijuana product using a second sample if:

1. The batch of marijuana or marijuana product is still in the possession of the dispensary;
2. The dispensary receives notification from the Department, a marijuana establishment, or another dispensary that indicates that the final report of testing from a laboratory, specified in R9-17-404.06(B)(3), for the batch of medical marijuana or marijuana product may be inaccurate;
3. The dispensary:
   a. If the notification in subsection (D)(2) is from a marijuana establishment or another dispensary, informs the Department that the final report of testing may be inaccurate, providing the name of the notifying dispensary or marijuana

establishment;

b. Collects the second sample according to subsections (B)(2) and (3);

~~b.~~c. Packages and labels the sample according to subsections (B)(4) and (5); and

~~c.~~d. Submits the sample to a second, independent laboratory that is approved by the Department for testing the analytes; and

4. The dispensary follows the requirements in subsections ~~(C)(2) through (4)~~ (C)(1) through (3) in determining whether the batch of medical marijuana or marijuana product:

a. May be offered for sale or dispensing, or

b. Is required to be remediated, if applicable, or destroyed.

E. A dispensary shall ensure that remediation of a batch of marijuana or of a marijuana product that has undergone laboratory testing and does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1:

1. Is performed according to policies and procedures,
2. Uses a method that is appropriate to address an analyte not in compliance with Table 3.1, and
3. Does not introduce or produce a substance in a concentration that is known to be harmful to humans.

F. If a batch of medical marijuana or a marijuana product is remediated, a dispensary shall submit samples from the remediated batch for laboratory testing according to subsection (B).

G. A dispensary shall provide to the Department upon request a sample of the dispensary's inventory of medical marijuana or a marijuana product of sufficient quantity to enable the Department to conduct an analysis of the medical marijuana or marijuana product.

Table 3.1. Analytes

Key:

CAS Number = Chemical Abstract Services Registry number
CFU = Colony-forming unit, a method to estimate the number of viable bacteria or fungal cells in a sample
* = Required for marijuana products only

A. Microbial Contaminants

Analyte	Maximum Allowable Contaminants	Required Action
Escherichia coli	10 CFU/g for edible marijuana or a marijuana-infused edible food product 100 CFU/g for all other medical marijuana and marijuana products	Remediate and retest, or Destroy
Salmonella spp.	Detectable in 1 gram	Destroy
Aspergillus flavus *Aspergillus fumigatus* *Aspergillus niger* *Aspergillus terreus*	Inhalable: Detectable in 1 gram	Remediate and retest, Remediate and use for preparing an extract or a concentrate, or Destroy
Mycotoxins: Aflatoxin B1, B2, G1, and G2 Ochratoxin A	Marijuana product, except a marijuana product intended for topical application, prepared from an extract or concentrate of medical marijuana: 20 µg/kg (ppb) of total aflatoxins 20 µg/kg (ppb) of ochratoxin	Destroy

B. Heavy Metals

Analyte	Maximum Allowable Concentration	Required Action
Arsenic	0.4 ppm	Remediate and retest, or Destroy
Cadmium	0.4 ppm	
Lead	1.0 ppm	
Mercury	0.2 ppm for inhalable medical marijuana or an inhalable marijuana product 1.2 ppm for non-inhalable medical marijuana and all other marijuana products	

C. *Residual Solvents

Analyte	CAS Number	Maximum Allowable Concentration	Required Action
Acetone	67-64-1	1,000 ppm	Remediate and retest, or Destroy
Acetonitrile	75-05-8	410 ppm	
Benzene	71-43-2	2 ppm	
Butanes (measured as the cumulative residue of n-butane and iso-butane)	106-97-8 and 75-28-5, respectively	5,000 ppm	
Chloroform	67-66-3	60 ppm	

Dichloromethane	75-09-2	600 ppm	
Ethanol	64-17-5	5,000 ppm	
Ethyl Acetate	141-78-6	5,000 ppm	
Ethyl Ether	60-29-7	5,000 ppm	
Heptane	142-82-5	5,000 ppm	
Hexanes (measured as the cumulative residue of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	110-54-3, 107-83-5, 96-14-0, 75-83-2, and 79-29-8, respectively	290 ppm	
Isopropyl Acetate	108-21-4	5,000 ppm	
Methanol	67-56-1	3,000 ppm	
Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neo-pentane)	109-66-0, 78-78-4, and 463-82-1, respectively	5,000 ppm	
2-Propanol (IPA)	67-63-0	5,000 ppm	
~~Propane~~	~~74-98-6~~	~~5,000 ppm~~	
Toluene	108-88-3	890 ppm	
Xylenes (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethyl benzene)	1330-20-7 (95-47-6, 108-38-3, and 106-42-3, respectively, and 100-41-4)	2,170 ppm	

D. Pesticides, Fungicides, Growth Regulators

Analyte	CAS Number	Maximum Allowable Concentration	Required Action
Abamectin (B1a)	71751-41-2	0.5 ppm	Remediate and retest, or Destroy
Acephate	30560-19-1	0.4 ppm	
~~Acequinocyl~~	~~57960-19-7~~	~~2.0 ppm~~	
Acetamiprid	135410-20-7	0.2 ppm	
Aldicarb	116-06-3	0.4 ppm	
Azoxystrobin	131860-33-8	0.2 ppm	
Bifenazate	149877-41-8	0.2 ppm	
Bifenthrin	82657-04-3	0.2 ppm	
Boscalid	188425-85-6	0.4 ppm	
Carbaryl	63-25-2	0.2 ppm	
Carbofuran	1563-66-2	0.2 ppm	
Chlorantraniliprole	500008-45-7	0.2 ppm	
Chlorfenapyr	122453-73-0	1.0 ppm	
Chlorpyrifos	2921-88-2	0.2 ppm	
Clofentezine	74115-24-5	0.2 ppm	
Cyfluthrin	68359-37-5	1.0 ppm	
Cypermethrin	52315-07-8	1.0 ppm	
Daminozide	1596-84-5	1.0 ppm	
DDVP (Dichlorvos)	62-73-7	0.1 ppm	
Diazinon	333-41-5	0.2 ppm	
Dimethoate	60-51-5	0.2 ppm	

Ethoprophos	13194-48-4	0.2 ppm	
Etofenprox	80844-07-1	0.4 ppm	
Etoxazole	153233-91-1	0.2 ppm	
Fenoxycarb	72490-01-8	0.2 ppm	
Fenpyroximate	134098-61-6	0.4 ppm	
Fipronil	120068-37-3	0.4 ppm	
Flonicamid	158062-67-0	1.0 ppm	
Fludioxonil	131341-86-1	0.4 ppm	
Hexythiazox	78587-05-0	1.0 ppm	
Imazalil	35554-44-0	0.2 ppm	
Imidacloprid	138261-41-3	0.4 ppm	
Kresoxim-methyl	143390-89-0	0.4 ppm	
Malathion	121-75-5	0.2 ppm	
Metalaxyl	57837-19-1	0.2 ppm	
Methiocarb	2032-65-7	0.2 ppm	
Methomyl	16752-77-5	0.4 ppm	
Myclobutanil	88671-89-0	0.2 ppm	
Naled	300-76-5	0.5 ppm	
Oxamyl	23135-22-0	1.0 ppm	
Paclobutrazol	76738-62-0	0.4 ppm	
Permethrins (measured as the cumulative residue of cis- and trans-isomers)	52645-53-1 (54774-45-7 and 51877-74-8)	0.2 ppm	
Phosmet	732-11-6	0.2 ppm	
Piperonyl butoxide	51-03-6	2.0 ppm	
Prallethrin	23031-36-9	0.2 ppm	
Propiconazole	60207-90-1	0.4 ppm	
Propoxur	114-26-1	0.2 ppm	
Pyrethrins (measured as the cumulative residue of pyrethrin ~~1~~, ~~cinerin 1 and jasmolin 1~~ I and II)	8003-34-7 (121-21-1, 25402-06-6, and 4466-14-2)	1.0 ppm	
Pyridaben	96489-71-3	0.2 ppm	
Spinosad (measured as the cumulative residue of Spinosyn A and Spinosyn D)	168316-95-8	0.2 ppm	
Spiromesifen	283594-90-1	0.2 ppm	
Spirotetramat	203313-25-1	0.2 ppm	
Spiroxamine	118134-30-8	0.4 ppm	
Tebuconazole	107534-96-3	0.4 ppm	
Thiacloprid	111988-49-9	0.2 ppm	
Thiamethoxam	153719-23-4	0.2 ppm	
Trifloxystrobin	141517-21-7	0.2 ppm	

E. Potency

Analyte	Labelling	Required Action
Tetrahydrocannabinolic acid (THC-A)	Label claim is not within +/- 20 % of tested value	Revise label as necessary
Delta-9-tetrahydrocannabinol (Δ9-THC)		

Cannabidiolic acid (CBD-A) Cannabidiol (CBD)		
~~F. Herbicides~~		
~~Analyte~~	**~~Maximum Allowable Contaminant~~**	**~~Required Action~~**
~~Pendimethalin~~	~~0.1 ppm~~	~~Remediate and retest, or Destroy~~

R9-17-318. Security

A. ~~Except as provided in R9-17-310(A)(7) or R9-17-324(C), a~~ A dispensary shall ensure that access into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, as defined in A.R.S. § 36-2850, manufactured, or stored is limited to the dispensary's principal officers, board members, and authorized ~~dispensary agents~~ individuals, unless the individual is supervised by an individual authorized according to subsection (G)(2)(a).

B. A dispensary agent may transport marijuana, marijuana plants, marijuana products, and marijuana paraphernalia between the dispensary and:

1. The dispensary's cultivation site,
2. A qualifying patient,
3. Another dispensary,
4. A marijuana establishment licensed according to 9 A.A.C. 18, and
5. ~~4.~~ A laboratory that has a laboratory registration certificate issued by the Department.

C. Before transportation, a dispensary agent shall:

1. Complete a trip plan that includes:
   a. The name of the dispensary agent in charge of transporting the marijuana;
   b. The date and start time of the trip;
   c. A description of the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia being transported;
   d. Any anticipated stops during the trip, including the locations of the ~~stop~~ stops and arrival time and departure time ~~from the~~ for each location; and
   e. The anticipated route of transportation; and
2. Provide a copy of the trip plan in subsection (C)(1) to the dispensary.

D. During transportation, a dispensary agent shall:

1. Carry a copy of the trip plan in subsection (C)(1) with the dispensary agent for the duration of the trip;
2. Use a vehicle:
   a. ~~without~~ Without any marijuana identification;
   b. Equipped with a global positioning system or other means of tracking the location of the vehicle;
   c. With an operational video surveillance system and recording equipment that:
      i. Shows the interior of the vehicle, including the driver's seat and location of the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia being transported;

ii. Is turned on for the duration of a trip while medical marijuana or a marijuana product is in the vehicle; and

iii. Either stores the recording for at least 30 calendar days or transmits the recorded images at the time of recording to another location, where the recorded images are stored for at least 30 calendar days; and

d. With a locked compartment in which any marijuana or marijuana products being transported may be stored during a trip;

3. Have a means of communication with the dispensary;

4. Notate the arrival time and departure time for each stop; and

~~4.~~5. Ensure that the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia are stored in the locked compartment specified in subsection (D)(2)(d) and are not visible.

E. After transportation, a dispensary agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).

F. A dispensary shall:

1. Maintain the documents required in subsection (C)(2) and (E) for at least two years after the date of the documentation;

2. If transporting a sample to a laboratory for testing, provide a copy of the trip plan to the laboratory; and

3. Provide a copy of the documents required in subsection (C)(2) and (E) to the Department for review upon request.

G. To prevent unauthorized access to medical marijuana at the dispensary and, if applicable, the dispensary's cultivation site, the dispensary shall have the following:

1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:

a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device;

b. Exterior lighting to facilitate surveillance;

c. Electronic monitoring including:

i. At least one 19-inch or greater call-up monitor;

ii. A printer capable of immediately producing a clear still photo from any video camera image;

iii. Video cameras:

(1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building; and

(2) Having a recording resolution of at least 704 x 480 or the equivalent;

iv. A video camera at each point of sale location allowing for the identification of any qualifying patient or designated caregiver purchasing medical marijuana;

v. A video camera in each grow room capable of identifying any activity occurring within the grow room in low light conditions;

vi. Storage of video recordings from the video cameras for at least 30 calendar days;

vii. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and

viii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and

d. Panic buttons in the interior of each building; and

2. Policies and procedures:

a. That provide for the identification of authorized individuals;

~~a.~~b. That deter unauthorized removal of marijuana or marijuana products from the premises, including:

i. ~~restrict~~ Restricting access to the areas of the dispensary that contain marijuana and, if applicable, the dispensary's cultivation site to authorized individuals only; and

ii. Ensuring that an individual other than an authorized individual is supervised by an authorized individual when in an area specified in subsection (G)(2)(b)(i);

~~b. That provide for the identification of authorized individuals;~~

c. That prevent loitering;

d. For conducting electronic monitoring; and

e. For the use of a panic button.

R9-17-321. Physical Plant

A. A dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed, as applicable:

1. Before the date the dispensary submitted the initial dispensary registration certificate application,
2. Before the date of an application to change the location of the dispensary, or
3. Before the date of an application to add a cultivation site.

B. A dispensary shall provide onsite parking or parking adjacent to the building used as the dispensary.

C. A building used as a dispensary or the location used as a dispensary's cultivation site shall have:

1. At least one toilet room;
2. Each toilet room shall contain:
   a. A flushable toilet;
   b. Mounted toilet tissue;
   c. A sink with running water;
   d. Soap contained in a dispenser; and
   e. Disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer;
3. At least one hand washing sink not located in a toilet room, with running water, soap contained in a dispenser, and either disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer;
4. Designated storage areas for medical marijuana or materials used in direct contact with medical marijuana separate from storage areas for toxic or flammable materials; and
5. If preparation or packaging of medical marijuana is done in the building, a designated area for the preparation or packaging that:
   a. Includes work space that can be sanitized, and
   b. Is only used for the preparation or packaging of medical marijuana.

D. For each commercial device used at a dispensary or the dispensary's cultivation site, the dispensary shall:

1. Ensure that the commercial device is licensed or certified pursuant to A.R.S. § ~~41-2091~~ 3-3451,
2. Maintain documentation of the commercial device's license or certification, and
3. Provide a copy of the commercial device's license or certification to the Department for review upon request.

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

A. The Department shall deny an application for a dispensary registration certificate or a renewal if:

1. For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application, before the date of an application to change the location of the dispensary, or before the date of an application to add a cultivation site;
2. A principal officer or board member:
   a. Has been convicted of an excluded felony offense;
   b. Has served as a principal officer or board member for a dispensary or marijuana establishment that~~:~~
      ~~i.~~ ~~Had~~ had the dispensary registration certificate or marijuana establishment license revoked~~, or~~
      ~~ii. Did not obtain an approval to operate the dispensary or marijuana establishment, as applicable, within 18 months after the dispensary registration certificate or marijuana establishment license was issued~~;
   c. Is under 21 years of age; or
   d. Is a physician currently providing written certifications for medical marijuana for qualifying patients; or
3. The application or the dispensary does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter.

B. The Department may deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary:

1. Did not obtain an approval to operate the dispensary or marijuana establishment, as applicable, within 18 months after the dispensary registration certificate or marijuana establishment license was issued; or
2. ~~provides~~ Provides false or misleading information to the Department.

C. The Department shall revoke a dispensary's registration certificate if:

1. The dispensary:
   a. Operates before obtaining approval to operate a dispensary from the Department;
   b. Diverts marijuana to a person other than:
      i. Another dispensary with a valid dispensary registration certificate issued by the Department,

ii. A marijuana establishment with a valid marijuana establishment license issued under 9 A.A.C. 18;

iii. A laboratory with a valid laboratory registration certificate issued by the Department,

iv. A qualifying patient with a valid registry identification card issued by the Department,

v. A designated caregiver with a valid registry identification card issued by the Department,

vi. A dispensary agent with a valid registry identification card or marijuana facility agent with a valid marijuana facility agent license issued by the Department accepting the marijuana on behalf of a dispensary or marijuana establishment, or

vii. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory;

c. Acquires usable marijuana or mature marijuana plants from any entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a marijuana establishment with a marijuana establishment license issued under 9 A.A.C. 18, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or

d. Acquires a marijuana product from any person other than another dispensary with a valid dispensary registration certificate issued by the Department or a marijuana establishment with a marijuana establishment license issued under 9 A.A.C. 18; or

2. A principal officer or board member has been convicted of an excluded felony offense.

D. The Department may revoke a dispensary registration certificate if the dispensary does not:

1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
2. Implement the policies and procedures or comply with the statements provided to the Department with the dispensary's application.

E. If the Department denies a dispensary registration certificate application, the Department shall provide notice to the applicant that includes:

1. The specific reason or reasons for the denial, and
2. All other information required by A.R.S. § 41-1076.

F. If the Department revokes a dispensary registration certificate, the Department shall provide notice to the dispensary that includes:

1. The specific reason or reasons for the revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-323. Denial or Revocation of a Dispensary Agent's Registry Identification Card

A. The Department shall deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent~~:~~

~~1.~~ ~~Does~~ does not meet the definition "nonprofit medical marijuana dispensary agent" in A.R.S. § 36-2801~~;~~.

~~2. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter; or~~

~~3. Previously had a marijuana facility agent license revoked for not complying with A.R.S. Title 36, Chapter 28.2 or 9 A.A.C. 18.~~

B. The Department may deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent:

1. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter;
2. Previously had a marijuana facility agent license revoked for not complying with A.R.S. Title 36, Chapter 28.2 or 9 A.A.C. 18; or
3. ~~provides~~ Provides false or misleading information to the Department.

C. The Department shall revoke a dispensary agent's registry identification card if the dispensary agent:

1. Diverts medical marijuana to a person other than:
   a. Another dispensary with a valid dispensary registration certificate issued by the Department,
   b. A marijuana establishment with a valid marijuana establishment license issued under 9 A.A.C. 18;
   c. A laboratory with a valid laboratory registration certificate issued by the Department,
   d. A qualifying patient with a valid registry identification card issued by the Department,
   e. A designated caregiver with a valid registry identification card issued by the Department,
   f. A dispensary agent with a valid registry identification card or marijuana facility agent with a valid marijuana facility agent license issued by the Department

accepting the marijuana on behalf of a dispensary or marijuana establishment, or

g. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory; or

2. Except as provided in A.R.S. § 36-2804.01(D), has been convicted of an excluded felony offense.

D. The Department may revoke a dispensary agent's registry identification card if the dispensary agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.

E. If the Department denies or revokes a dispensary agent's registry identification card, the Department shall provide notice to the dispensary agent and the dispensary agent's dispensary that includes:

1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-324. Dual Licensees

A. If a dispensary is a dual licensee, the dispensary shall:

1. Provide marijuana and marijuana products, according to A.A.C. R9-18-309, to consumers, as defined in A.R.S. § 36-2850, at the same location as the dispensary dispenses medical marijuana and marijuana products to qualifying patients and designated caregivers;
2. Notify the Department within five calendar days after beginning to operate on a for-profit basis, as allowed by A.R.S. § 36-2858(D)(2), and, if applicable, provide to the Department the documents required in R9-17-304(C)(2) for the new organizational or corporate structure; and
3. Comply with the requirements in A.R.S. § 36-2858(D)(3).

B. If a dispensary is a dual licensee, the entity holding the valid dispensary registration certificate may:

1. Request that the dispensary's cultivation site, specified according to R9-17-305(A)(1)(e) or R9-17-307(A)(1), be transferred under the entity's marijuana establishment license according to A.A.C. R9-18-303(E)(3);
2. Request approval of a change in the location in subsection (A)(1) by complying with the requirements in both:
   a. R9-17-307(A), and
   b. A.A.C. R9-18-306; or
3. Transfer or assign both the dispensary registration certificate and the marijuana

establishment license to the same entity.

~~C.~~ ~~A dispensary that is a dual licensee may allow an individual without a dispensary agent registry identification card or marijuana facility agent license into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, manufactured, or stored if the individual:~~

~~1. Is not at the dispensary or the dispensary's cultivation site more than once per week; and~~

~~2. When at the dispensary or the dispensary's cultivation site, is supervised by a dispensary agent who has a valid registry identification card or an individual with a valid marijuana facility license associated with the dispensary.~~

~~D.~~C. A dispensary that is a dual licensee is exempt from the requirements in:

1. ~~R9-17-310(A)(5), (12), and (13)~~ R9-17-310(A)(6), (13), and (14);
2. R9-17-313; and
3. R9-17-320(B)(4) and (5), but shall ensure that a dispensary agent or marijuana facility agent at the dispensary or the dispensary's cultivation site:
   a. Reports to a principal officer or board member of the dispensary any health condition experienced by the dispensary agent or marijuana facility agent that may adversely affect the safety or quality of any medical marijuana or marijuana products with which the dispensary agent or marijuana facility agent may come into contact; and
   b. If the principal officer or board member determines that a dispensary agent or marijuana facility agent has a health condition that may adversely affect the safety or quality of the medical marijuana or marijuana products, is prohibited from direct contact with any medical marijuana, marijuana products, or equipment or materials for processing medical marijuana, as defined in A.R.S. § 36-2850, or preparing marijuana products until the principal officer or board member determines that the dispensary agent's or marijuana facility agent's health condition will not adversely affect the medical marijuana or marijuana products.

~~E.~~D. If the Department identifies an instance of noncompliance with a requirement of both this Chapter and 9 A.A.C. 18 during an inspection of a dual licensee, the Department shall note the instance of noncompliance on a notice of deficiencies associated with the dual licensee's marijuana establishment license under 9 A.A.C. 18, rather than on both the notice of deficiencies for the dispensary registration certificate and the notice of deficiencies for the marijuana establishment license.

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

R9-17-402. Applying for a Laboratory Registration Certificate

A. To apply for a laboratory registration certificate, an applicant shall submit to the Department the following:

1. An application in a Department-provided format that includes:
    a. The physical address of the laboratory;
    b. The distance to the closest private school or public school from the laboratory;
    c. The following information for the laboratory applying:
        i. The legal name of the laboratory,
        ii. Type of business organization,
        iii. Mailing address,
        iv. Telephone number, and
        v. E-mail address;
    d. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;
    e. The name, residence address, and date of birth of each owner;
    f. The identifying number on the applicable card or document in subsection (A)(4)(d)(i) through (v);
    g. The name, residence address, and date of birth of the technical laboratory director designated according to R9-17-404(3);
    h. The name, residence address, and date of birth of each laboratory agent other than an owner or the technical laboratory director, if applicable;
    i. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
    j. A statement that, if the applicant is issued a laboratory registration certificate, the laboratory will not begin testing marijuana pursuant to R9-17-317.01 until the laboratory has been inspected and issued an approval for testing by the Department;
    ~~j.~~k. An attestation that the information provided to the Department to apply for a laboratory registration certificate is true and correct; and
    ~~k.~~l. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. Policies and procedures that comply with the requirements in this Chapter that contain:

a. Inventory control;

b. A chain of custody and sample requirement process;

c. A records retention process;

d. A secure method to transfer the portion of a sample remaining after testing to another laboratory with an approval for testing issued by the Department:

i. For testing of parameters or analytes that the laboratory receiving the sample from a dispensary is not approved by the Department to conduct, or

ii. For retesting at the request of a dispensary according to R9-17-317.01(C);

e. Security;

~~f. A process to ensure marijuana or marijuana products testing results are accurate, precise, and scientifically valid before reporting the results;~~ and

~~g.~~ f. A process for disposal of marijuana or marijuana products that are submitted to the laboratory for testing;

3. If the applicant is one of the business organizations in R9-17-401(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:

a. The name of the business organization,

b. The type of business organization, and

c. The names and titles of the individuals in R9-17-401(A);

4. For each owner:

a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;

b. An attestation signed and dated by the owner that the owner does not have a direct or indirect familial or financial relationship with or interest in a dispensary, marijuana establishment, or related medical marijuana business entity~~,~~ or management company;

c. An attestation signed and dated by the owner that the laboratory will not test marijuana or marijuana products for a designated caregiver who the owner has a direct or indirect familial or financial relationship with;

d. An attestation signed and dated by the owner pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

e. A copy the owner's:

i. Arizona driver's license issued on or after October 1, 1996;

ii. Arizona identification card issued on or after October 1, 1996;

iii. Arizona registry identification card;

iv. Photograph page in the owner's U.S. passport or a U.S. passport card; or

v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the owner:

(1) Birth certificate verifying U.S. citizenship,

(2) U. S. Certificate of Naturalization, or

(3) U. S. Certificate of Citizenship; and

f. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:

i. The owner's fingerprints on a fingerprint card that includes:

(1) The owner's first name; middle initial, if applicable; and last name;

(2) The owner's signature;

(3) If different from the owner, the signature of the individual physically rolling the owner's fingerprints;

(4) The owner's residence address;

(5) If applicable, the owner's surname before marriage and any names previously used by the owner;

(6) The owner's date of birth;

(7) The owner's Social Security number;

(8) The owner's citizenship status;

(9) The owner's gender;

(10) The owner's race;

(11) The owner's height;

(12) The owner's weight;

(13) The owner's hair color;

(14) The owner's eye color; and

(15) The owner's place of birth; or

ii. If the fingerprints and information required in subsection (A)(4)(f)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent

registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the owner as a result of the application;

5. If zoning restrictions have been enacted, a ~~sworn~~ statement, in a Department-provided format, signed and dated ~~by the individual or individuals in R9-17-401(A) certifying that the laboratory is in compliance with any local zoning restrictions~~ within 60 calendar days before the date of the application by a representative of the local jurisdiction:
   a. Certifying that the laboratory is in compliance with any local zoning restrictions; and
   b. Including:
      i. Information identifying the local jurisdiction and the local jurisdiction's representative,
      ii. The legal name of the laboratory, and
      iii. The physical address of the laboratory as specified according to subsection (A)(1)(a);
6. A copy of documentation issued by the local jurisdiction to the laboratory authorizing occupancy of the building as a laboratory, such as a certificate of occupancy, a special use permit, or a conditional use permit;
7. A site plan drawn to scale of the laboratory location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;
8. A building plan drawn to scale of the building where the laboratory is located showing the:
   a. Layout and dimensions of each room;
   b. Name and function of each room;
   c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;
   d. Location of each fire protection device;
   e. Layout of heating, air conditioning, exhaust, and ventilation systems;
   f. Location and layout of refrigerated rooms or freezer rooms;
   g. Location of each sink, safety shower, other water supply, or plumbing fixture;
   h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;

i. Location of security measures or equipment to protect from diversion of marijuana or marijuana products; and

j. Means of egress;

9. Documentation of accreditation of the location specified according to subsection (A)(1)(a) for which the applicant is applying for a laboratory registration certificate;

10. The laboratory's Transaction Privilege Tax Number issued by the Arizona Department of Revenue, if applicable; and

11. The applicable fee in R9-17-102 for applying for a laboratory registration certificate.

B. Within 72 hours after an owner receives a laboratory registration certificate pursuant to an application submitted according to subsection (A), the owner shall apply for a laboratory agent registry identification card, according to R9-17-405, for each laboratory agent, including a technical laboratory director.

C. A change in location of the laboratory's physical address or ownership requires a new application to be submitted according to subsection (A).

D. A separate laboratory registration certificate is required for each noncontiguous portion of a laboratory.

R9-17-402.01. Applying for Approval for Testing

To apply for approval for testing, an applicant shall submit to the Department, at least 60 calendar days before the expiration of the initial laboratory registration certificate for the laboratory, the following:

1. An application in a Department-provided format that includes:

a. The name and registry identification number of the laboratory;

b. The physical address of the laboratory;

c. The name of the applicant;

d. The name of the technical laboratory director designated according to R9-17-404(3);

e. For each parameter for which approval for testing is being requested:

i. The analyte to be tested for,

ii. The instruments and equipment to be used for testing, and

iii. The software to be used at the laboratory for instrument control and data reduction interpretation;

f. The laboratory's proposed hours of operation;

g. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;

h. Whether the laboratory is ready for an inspection by the Department;

i. If the laboratory is not ready for an inspection by the Department, the date the laboratory will be ready for an inspection by the Department;

j. An attestation that the information provided to the Department to apply for approval for testing is true and correct; and

k. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;

2. For each parameter and analyte listed according to subsection (1)(e):

a. A copy of current accreditation;

~~a.~~b. The limit of quantitation for each matrix, according to R9-17-404.03(I);

~~b.~~c. A copy of a proficiency testing report~~, if applicable, or accuracy testing documentation~~; ~~and~~

~~c.~~d. A copy of the standard operating procedure; and

e. Documentation of the initial demonstration of capabilities for each matrix, according to R9-17-404.03(D);

3. Policies and procedures that comply with the requirements in this Chapter that include:

a. A quality assurance program and standards,

b. A process to ensure marijuana or marijuana products testing results are accurate, precise, and scientifically valid before reporting the results; and

~~b.~~c. A process to compile testing results into a single laboratory report to be provided to a dispensary; and

4. If different from the building plan submitted according to R9-17-402(A)(8), a building plan drawn to scale of the building where the laboratory is located showing the:

a. Layout and dimensions of each room;

b. Name and function of each room;

c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;

d. Location of each fire protection device;

e. Layout of heating, air conditioning, exhaust, and ventilation systems;

f. Location and layout of refrigerated rooms or freezer rooms;

g. Location of each sink, safety shower, other water supply, or plumbing fixture;

h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;

i. Location of security equipment to protect from diversion of marijuana or marijuana products; and

j. Means of egress.

R9-17-404. Administration

An owner of a laboratory with a laboratory registration certificate shall:

1. Comply with the:
   a. Quality assurance requirements in R9-17-404.05,
   b. Operation requirements in R9-17-404.06, and
   c. Laboratory records and reports requirements in R9-17-404;
2. Maintain accreditation for each approved parameter and analyte;
3. Designate in writing a technical laboratory director who:
   a. Has knowledge and experience in overseeing a laboratory as documented by:
      i. A doctoral degree in chemistry, biochemistry, microbiology, or a similar laboratory science;
      ii. A master's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and at least two years of experience working in a laboratory and providing laboratory testing; or
      iii. A bachelor's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and at least four years of experience working in a laboratory and providing laboratory testing; and
   b. Is responsible for:
      i. Ensuring that all services and tests provided by the laboratory are performed in compliance with the requirements in this Article;
      ii. Directing and supervising services and tests provided by the laboratory;
      iii. Overseeing the work of all personnel in the laboratory;
      iv. Providing ongoing training to laboratory agents, as applicable to the functions performed by a laboratory agent; and
      v. Ensuring safety and hazardous substance control in the laboratory;
4. Notify the Department in writing within 20 business working days after any change in the technical laboratory director, providing the name and contact information for the new technical laboratory director;
5. Develop, document, and implement policies and procedures regarding:
   a. Job descriptions and employment contracts, including:
      i. Personnel duties, authority, responsibilities, and qualifications;
      ii. Personnel supervision;
      iii. Ongoing training, applicable to the functions performed by a laboratory

agent;

iv. Training in and adherence to confidentiality requirements;

v. Periodic performance evaluations, including proficiency testing ~~or accuracy testing, as applicable,~~ on a rotating basis among all laboratory agents performing similar functions; and

vi. Disciplinary actions;

b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;

c. Inventory control, including:

i. Tracking;

ii. Accepting medical marijuana or marijuana products for testing;

iii. Transferring a portion of a sample prepared or selected according to subsection (5)(e)(v) to another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct;

iv. Testing medical marijuana and marijuana products;

v. Providing ~~the remaining~~ a representative portion of the sample of tested medical marijuana or a marijuana product, which had been prepared or selected according to subsection (5)(e)(v), to ~~another laboratory~~ up to two other laboratories, with an approval for testing issued by the Department, at the request of a dispensary according to R9-17-317.01(C);

vi. Retaining the residual portion of a sample accepted for testing from a dispensary for at least 14 days after sending the final report of testing required in R9-17-404.06(B)(3) to the dispensary; and

vii. Disposing of medical marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting:

(1) The method of disposal;

(2) Whether the medical marijuana or marijuana product was tested;

(3) If not tested, the reason for not testing;

(4) The laboratory agent overseeing the disposal; and

(5) The date of disposal;

d. Standard operating procedures, including:

i. The review and updating of standard operating procedures;

ii. Requirements for a laboratory agent to review current, new, or updated standard operating procedures applicable to the functions performed by the laboratory agent; and

iii. Documenting the review of standard operating procedures by applicable laboratory agents;

e. Laboratory records, including:

i. Maintenance and monitoring of instruments and equipment;

ii. Acceptance of medical marijuana and marijuana products for testing, including the specification of the analytes to be tested for;

iii. The chain of custody and applicable trip plan, according to R9-17-408, for a sample accepted by the laboratory for testing;

iv. The storage of a submitted sample prior to testing to maintain the integrity of the sample and analyte;

v. The process for ~~selecting~~ ensuring that a homogeneous portion of a submitted sample is prepared or selected for testing, including:

(1) The aseptic removal of a homogeneous portion of the sample for testing according to R9-17-404.04; and

(2) Further preparation of a homogeneous portion of the sample, if necessary, for testing according to R9-17-404.03;

vi. Ensuring testing results are accurate, precise, and scientifically valid before reporting the results;

vii. Reporting of testing results, including:

(1) Testing results obtained from another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct, or

(2) Testing results provided to another laboratory from which the laboratory had received a portion of a sample for testing of parameters or analytes that the other laboratory is not approved by the Department to conduct;

viii. If applicable, transfer of a portion of a sample, according to subsection (5)(c)(v), to another laboratory with an approval for testing issued by the Department for testing of parameters or analytes that the laboratory is not

approved by the Department to conduct, including:

(1) The name and registry identification number of the dispensary from which the sample was obtained,

(2) The name and registry identification number of the laboratory to which the portion of the sample is being transferred,

(3) The date of the transfer,

(4) The amount of sample being transferred,

(5) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the other laboratory;

(6) The parameters or analytes being tested by the other laboratory, and

(7) The testing results obtained from the other laboratory;

ix. If applicable, transfer of the portion of a sample remaining after testing, according to subsection (5)(c)(v), to ~~another laboratory~~ no more than two other laboratories with an approval for testing issued by the Department at the request of a dispensary according to R9-17-317.01(C), including:

(1) The name and registry identification number of the dispensary,

(2) The name and registry identification number of the dispensary agent requesting the transfer on behalf of the dispensary,

(3) The date of the request,

(4) The amount of sample being transferred,

(5) The name and registry identification number of ~~the~~ each other laboratory, and

(6) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of ~~the~~ each other laboratory;

x. Confidentiality; and

xi. ~~Retention~~ Sample retention;

f. A quality assurance program and standards;

g. A records retention process; and

h. Security;

6. Review and document the review of laboratory policies and procedures at least once every 12 months after the issue date of the laboratory registration certificate and update

as needed;

7. Ensure that each laboratory agent has the laboratory agent's registry identification card in the laboratory agent's immediate possession when the laboratory agent is working or providing volunteer services related to marijuana or marijuana products testing at the laboratory;
8. Ensure that a laboratory agent accompanies any individual other than another laboratory agent associated with the laboratory when the individual is present in the area of the laboratory where marijuana or marijuana products are being tested or stored for testing;
9. Not allow an individual who does not possess a laboratory agent registry identification card issued under the laboratory registration certificate to:
    a. Serve as an owner for the laboratory,
    b. Be employed by the laboratory, or
    c. Provide volunteer services at or on behalf of the laboratory;
10. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a laboratory agent no longer:
    a. Serves as an owner for the laboratory,
    b. Is employed by the laboratory, or
    c. Provides volunteer services at or on behalf of the laboratory;
11. Unless otherwise specified, maintain copies of any documentation required in this Chapter for at least two years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

R9-17-404.02. Proficiency Testing~~; Accuracy Testing~~

A. At least once in each 12-month period, and more often if requested by the Department, a technical laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in proficiency testing provided by the Department or a proficiency testing service that:

1. Includes at least one proficiency testing sample, in a matrix similar to the medical marijuana or marijuana products accepted for testing, for each parameter and analyte for which the laboratory has been approved or is requesting approval ~~and for which proficiency testing samples are available~~;
2. Demonstrates the laboratory agent's competence in testing for the parameter; and
3. If the laboratory has been approved or has requested approval to test an analyte by different methods, may use the same proficiency testing sample for each method.

~~**B.** If a proficiency testing sample is not available for a specific parameter and analyte, a technical~~

~~laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in accuracy testing for the parameter.~~

~~C.~~**B.** To demonstrate competence in testing for a parameter, testing results reported for the parameter shall be within acceptance limits established by the Department, according to R9-17-404.03 or R9-17-404.04, or the proficiency testing service, as applicable.

~~D.~~**C.** A technical laboratory director shall ensure that:

1. Each sample for proficiency testing accepted at the laboratory is analyzed at the laboratory;
2. ~~Each sample for accuracy testing is analyzed at the laboratory;~~
3. ~~2.~~ Each sample for proficiency testing ~~or accuracy testing~~ is tested according to R9-17-404.03 or R9-17-404.04, using the same procedures and techniques employed for routine sample testing;
4. ~~4.~~3. A proficiency testing service provides the results for each proficiency testing sample directly to the laboratory and the Department;
5. ~~5.~~4. If proficiency testing is provided by the Department, the laboratory submits to the Department payment for the actual costs of the materials for proficiency testing; ~~and~~
6. ~~6.~~5. If proficiency testing is not provided by the Department, the laboratory selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing; and
6. For any analyte not within the acceptance limit established by the Department or the proficiency testing service in subsection (C)(5), as applicable:
    a. A corrective action plan:
        i. Is submitted to the Department within 10 calendar days after failing to demonstrate competency in proficiency testing,
        ii. Describes how each identified instance of failing to demonstrate competency will be corrected, and
        iii. Includes a date for correcting the failure to demonstrate competency that is appropriate to the actions necessary to correct the instance of noncompliance; and
    b. If the laboratory fails to demonstrate competency in proficiency testing for any analyte twice in a row, the laboratory does not test for the analyte until the laboratory has demonstrated competency in testing for the analyte by repeat proficiency testing.

~~E.~~**D.** The Department may submit proficiency testing samples to a laboratory at any time during the

certification period.

R9-17-404.03. Method Criteria and References for Chemical Analyses

A. In addition to the definitions in A.R.S. § 36-2801 and R9-17-101, the following definitions apply in this Section unless otherwise stated:

1. "Limit of quantitation" means the lowest concentration of an analyte that may be detected and the concentration of the analyte reliably and accurately determined.
2. ~~"Matrix" means the specific components of a sample, other than the analyte being tested for.~~
3.2. "Mid-level standard" means a standard that is between the highest concentration and lowest concentration of standards containing the same substances that are used as a reference when testing for the concentration of an analyte.
4.3. "Response factor" means the ratio between a signal produced by an analyte relative to a signal produced by an internal standard at a specific concentration.
5.4. "Retention time" means the length of time taken by an analyte to pass through a chromatography column.
6.5. "Standard" means a sample of known concentration and containing specific substances that is used as a reference when testing for the concentration of an analyte.

B. To perform laboratory testing using chemical analytical methods for any of the analytes in Table 3.1, a laboratory may use:

1. An established national or international chemical method; or
2. A laboratory-developed method that was validated according to:
    a. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_k.pdf;
    b. USDA - Guidelines for the Validation of Chemical Methods for the FDA FVM Program, 2nd Edition, April 2015, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.fda.gov/media/81810/download; or
    c. ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1__Guideline.pdf or https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology.

C. A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product by chemical analytical methods are:

1. Set up, tuned, and calibrated according to:
   a. Manufacturer's acceptance criteria, or
   b. Criteria validated according to subsection (B), as applicable;
2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.aoac.org/aoac-accreditation-guidelines-for-laboratories-alacc; and
3. Applicable for the analytes to be tested.

D. A technical laboratory director shall ensure that for an initial demonstration of capability:

1. Before implementing a method or using a new instrument, at least four replicate reference samples ~~for~~ including each analyte that are to be tested using the method or the instrument are:
   a. Spiked into a clean matrix that is similar to the medical marijuana or marijuana product to be tested with~~, as applicable, an amount ± 20% of the maximum allowable concentration for the analyte in Table 3.1 or the~~ a mid-level standard ~~for potency testing~~;
   b. Taken through the entire sample preparation and analysis process;
   c. Have a relative standard deviation of ~~±~~ no more than 20%; and
   d. Have an accuracy that meets the acceptance criteria in ~~subsection (K)(2)(c)~~ subsection (K)(2)(d);
2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and
3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.

E. For potency testing or testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, mycotoxins, or residual solvents, a technical laboratory director shall ensure that the retention time window for each analyte is established by using the absolute retention time for each analyte and internal standard from the calibration verification standard, prepared according to subsection (H) or (J) as applicable, at the beginning of the analytical sequence~~:~~.

~~1. For establishing the retention time for an analyte, the retention time is determined by three injections, over the course of a 72-hour period, of a standard ± 20% of, as applicable:~~

~~a. The maximum allowable concentration in Table 3.1 for the analyte; or~~

~~b. The mid-level standard for potency testing; and~~

~~2. The width of the retention time window for each analyte is defined as ±3 times the standard deviation of the mean absolute retention time that was established during the 72-hour period or 0.1 minutes, whichever is greater.~~

F. A technical laboratory director shall ensure that:

1. The laboratory complies with the following requirements related to calibration and standards:
   a. Except as specified in subsection (F)(1)(c), a minimum of:
      i. Five standards are used for an average response factor or for a linear model,
      ii. Six standards are used for a quadratic model, and
      iii. Seven standards are used for a cubic model;
   b. An X-value of zero is not included as a calibration point;
   c. A calibration curve for heavy metal testing includes a minimum of three standards and a calibration blank;
   d. One standard is ~~± 20% of~~ less than or equal to the limit of quantitation;
   e. The maximum allowable concentration in Table 3.1 for an analyte, with or without dilution, is less than the concentration of the highest calibration standard for the analyte; and
   ~~e. Except as specified in subsection (F)(1)(f) and as applicable, one standard for each analyte is ± 20% of the:~~
      ~~i. Maximum allowable concentration in Table 3.1 for the analyte, or~~
      ~~ii. Mid-level standard for potency testing; and~~
   ~~f. For testing for residual solvents, either:~~
      ~~i. One standard for each analyte is ± 20% of the maximum allowable concentration in Table 3.1 for the analyte; or~~
   ~~ii.~~f. ~~A~~ As applicable, a standard is created containing a concentration of specific analytes that is a dilution factor from the maximum allowable concentration in Table 3.1 for the analyte and is used when performing multiple runs on a sample, with or without dilution, to cover the range of maximum allowable

concentrations in Table 3.1;

~~g. One standard is above the maximum allowable concentration in Table 3.1 for an analyte;~~

2. The acceptance criteria for testing is one of the following, as applicable:
   a. The maximum relative standard deviation for the average calibration factor, for an external calibration model, or the response factor, for an internal calibration model, is no more than 20%; and
   b. For linear and non-linear calibration models, the coefficient of determination (r^2) is greater than or equal to ~~0.99~~ 0.990 with no rounding;
3. For chromatographic testing methods using internal standards for calibration:
   a. The relative retention time of each analyte to the internal calibration standard is within 0.06 units;
   b. The areas of the peaks for the internal standards in any sample are between 50 and 200% of the area of the peak of ~~the internal~~ a mid-level standard ~~in subsection (F)(1)(c)~~ used for calibration; and
   c. The internal standards:
      i. Have retention times similar to the analytes being tested for,
      ii. Do not interfere with any of the analytes, and
      iii. Have similar chemical properties as the analytes being tested for; ~~and~~
4. For methods testing for heavy metals using internal standards, the internal standards:
   a. Are appropriate for the analyte, and
   b. Do not interfere with any of the analytes~~.~~;
5. When using a selective ion monitoring technique for data gathering, the integration window includes the entire analyte peak; and
6. All standards included for calibration that are below the limit of quantitation have a signal-to-noise ratio of at least 3:1 according to ASTM E685-93, Standard Practice for Testing Fixed-Wavelength Photometric Detectors Used in Liquid Chromatography (2013), which is incorporated by reference, includes no future editions or amendments, and is available at https://webstore.ansi.org/Standards/ASTM/astme685932013.

G. To obtain an acceptable calibration, a technical laboratory director, for each calibration event:

1. May use any of the following options:
   a. Perform instrument maintenance to optimize analyte responses, as long as all resulting calibration models meet the acceptance criteria appropriate for the analyte;

b. If the problem appears to be associated with a single standard:

i. Reanalyze that one standard, at the time of calibration and before any samples are analyzed, to rule out problems due to random error: and

ii. Recalculate and reevaluate the standard against the acceptance criteria;

c. Narrow the calibration range by replacing one or more of the calibration standards at the upper or lower ends of the curve;

d. Narrow the calibration range by removing data points from either extreme end of the range and recalculating the calibration function; or

e. Perform a new initial calibration according to subsection (F); and

2. May not:

a. Remove data points from within a calibration range while still retaining the extreme ends of the calibration range, ~~or~~

b. Use non-linear calibrations to compensate for detector saturation or to avoid proper instrument maintenance;

c. Use multiple points at the same calibration level if not also being done for all quality control samples, such as a sample required in subsection (K), and samples accepted for testing; or

d. Include calibration data from another calibration that was run at a different time.

H. A technical laboratory director shall ensure that, during each calibration event for initial calibration verification:

1. Standards are prepared either from a different source or from a different lot of standards from the same source than the source from which the initial calibration standards specified in subsection (F)(1) were obtained and must~~, as applicable~~:

a. Be ~~± 20% of:~~

~~i. The maximum allowable concentrations for an analyte in Table 3.1,~~

~~ii. According to subsection (F)(1)(f)(ii), or~~

~~iii.~~ ~~The~~ a mid-level standard ~~for potency testing~~; and

b. Contain all analytes being reported to comply with R9-17-317(A)(5); and

2. The following acceptance criteria are used:

a. For potency testing, 80 to 120% recovery of true value;

b. For testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, mycotoxins, or residual solvents other than butanes, 70 to 130% recovery of the true value;

c. For butanes, 60 to 140% recovery of the true value; and

~~c.~~ d. For heavy metal testing, 90 to 110% recovery of the true value.

I. A technical laboratory director shall ensure that for the limit of quantitation:

1. The limit of quantitation is initially verified by the analysis of at least seven replicate samples, spiked with all analytes at the limit of quantitation, and processed through all preparation and analysis steps ~~of the~~ for each method;
2. The signal-to-noise ratio of the replicate samples in subsection (I)(1) is at least 5:1 according to ASTM E685-93, Standard Practice for Testing Fixed-Wavelength Photometric Detectors Used in Liquid Chromatography (2013), which is incorporated by reference, includes no future editions or amendments, and is available at https://webstore.ansi.org/Standards/ASTM/astme685932013;
3. The mean recovery of the replicate samples in subsection (I)(1) is:
    a. For potency testing, ± 20% of the true value;
    b. For testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, mycotoxins, or residual solvents, ± 50% of the true value; and
    c. For heavy metal testing, ± 35% of the true value;
4. The relative standard deviation of the replicate samples in subsection (I)(1) is less than 20%;
5. The limit of quantitation is, as applicable, no greater than:
    a. Half the maximum allowable concentrations for an analyte in Table 3.1;
    b. For chlorfenapyr, cyfluthrin, or cypermethrin, the maximum allowable concentrations for the analyte in Table 3.1; or
    c. 1.0 mg/g for each analyte for potency testing;
6. Any changes to specific sample amounts, dilutions, or volumes employed are reflected in the limit of quantitation stated on a sample report;
7. The signal-to-noise ratio in subsection (I)(2) is reverified each time the instrument used for testing is calibrated; and
8. Documentation of the current limit of quantitation is maintained for each analyte, matrix, and ~~for each~~ instrument.

J. Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis:

1. Continuing calibration verification standards:
    a. Are prepared and spiked with a mid-level concentration of all analytes from the same calibration standard source used to prepare the standards specified in subsection (F)(1)~~:~~; and
        ~~i. Initially, with a concentration ± 20% of, as applicable, the maximum~~

~~allowable concentration for an analyte in Table 3.1, according to subsection (F)(1)(f)(ii), or the mid-level standard for potency testing for all analytes being reported to comply with R9-17-317(A)(5); and~~

~~ii. Subsequently, with a concentration at or between the highest concentration and lowest concentration of standards for the analytes in the batch;~~

b. Have the following acceptance criteria:

i. For potency testing, 80 - 120% recovery of true value;

ii. For testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, <u>or</u> mycotoxins, or residual solvents <u>other than butanes</u>, 70 - 130% recovery of the true value; ~~and~~

<u>iii. For butanes, 60 - 140% recovery of the true value; and</u>

~~iii.~~ <u>iv.</u> For heavy metal testing, 90 - 110% recovery of the true value;

2. If internal standards are used in continuing calibration verification, the acceptability criteria of the internal standards is determined as follows:

a. For testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, <u>mycotoxins,</u> or residual solvents by mass spectrometry, if the area of the peak for an internal standard is different by a factor of two from the area of the respective standard in subsection (F)(1)(e), for the most recent initial calibration sequence, according to subsection (F):

i. The mass spectrometer is inspected for malfunctions and corrected, and

ii. Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(ii) before any samples are tested; and

b. For heavy metal testing:

i. The intensity of an internal standard is monitored for each analysis to ensure that the intensity does not vary by more than ± 30%, with respect to the intensity during the initial calibration in subsection (F); and

ii. If the intensity of an internal standard is outside the range also observed in the calibration blank required in subsection (F)(1)(c):

(1) Testing is stopped until the problem is corrected, the instrument is recalibrated, and the new calibration is verified;

(2) Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(iii) before any samples are tested; and

(3) The affected samples are retested; and

3. The frequency of continuing calibration verification is as follows:

a. For testing by a method other than mass spectrometry:

i. At the beginning of the test;

ii. After every 20 samples, not counting a quality control sample, such as a sample required in subsection (K); and

iii. At the end of the test; and

b. For testing by mass spectrometry:

i. At the beginning of the testing,

ii. After every 12 hours of running, and

iii. At the end of the run.

K. Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis, which may contain no more than 20 samples accepted for testing:

1. A method blank, with a matrix similar to each type of sample matrix to be tested within the batch:

a. Contains the same internal standards as the samples in the batch,

b. Is prepared and tested with each batch, and

c. Produces results below the limit of quantitation;

2. Except as provided in subsection (R), a laboratory control sample and duplicate, with a matrix similar to each type of sample matrix to be tested within the batch:

a. Are prepared ~~± 20% of, as applicable:~~

~~i. The maximum allowable concentrations for an analyte in Table 3.1,~~

~~ii. According to subsection (F)(1)(f)(ii), or~~

~~iii. The~~ with a mid-level standard ~~for potency testing~~;

b. Are spiked before extraction;

~~b.~~c. Are carried through all stages of sample preparation and included with each analytical batch ~~of up to 20 samples~~; and

~~c.~~d. Have either the following acceptance criteria:

i. For potency testing, 80 - 120% recovery of true value;

~~ii. Except as specified in subsection (K)(2)(c)(iii), for testing for pesticides, fungicides, or growth regulators, 70 - 130% recovery of the true value;~~

~~iii. For Acequinocyl, Bifenthrin, Fludioxomil, Hexythiazox, Imazalil, Naled, Imidacloprid, and Spiroxamine, 70 – 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10);~~

~~iv. For residual solvents except propane and butane, 70 - 130% recovery of the true value;~~

~~v. For propane or butane, 60 - 140% recovery of the true value;~~

~~vi.~~ ii. For ~~herbicides and~~ pesticides, fungicides, growth regulators, mycotoxins, or residual solvents other than butanes, 70 – 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10);

iii. For butanes, 60 - 140% recovery of the true value or acceptance criteria within statistically derived limits developed by the laboratory; and

~~vii.~~iv. For heavy metal testing, 80 - 120% recovery of the true value or acceptance criteria within statistically derived limits developed by the laboratory;

3. The relative percent difference for the laboratory control sample and duplicate for each analyte, calculated on the basis of concentration or amount, is no more than 20%; and

4. ~~A~~ For all new matrix types to be tested, a matrix spike derived from a dispensary submitted sample:

   a. Is prepared ~~± 20% of, as applicable, the maximum allowable concentrations~~ for ~~an~~ each analyte in Table 3.1 ~~or the~~ with a mid-level standard ~~for potency testing~~;

   b. Is carried through all stages of sample preparation and included with each analytical batch of up to 20 samples for each matrix type; and

   c. Has either the following acceptance criteria or acceptance criteria within statistically derived limits developed by the laboratory:

      i. For potency testing, 80 - 120% recovery of true value or according to control limits derived according to R9-17-404.05(B)(10);

      ii. For testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, mycotoxins, or residual solvents, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10); and

      iii. For heavy metal testing, 75 - 125% recovery of the true value.

L. A technical laboratory director shall ensure that:

1. Except as provided in subsection (P), for potency testing or testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, mycotoxins, or residual solvents by mass spectrometry, the relative intensities of the characteristic ions agrees within 30% of the relative intensities of these ions in the reference spectrum; and

2. For heavy metal testing, the intensity of each internal standard is monitored for each analysis to ensure that the intensity does not vary more than ±30%, with respect to the intensity of the internal standard during the initial calibration specified in subsection (F).

M. A technical laboratory director shall ensure that ~~the resolution of chromatographic peaks~~:

1. ~~in potency~~ In testing ~~or testing for pesticides, fungicides, herbicides, growth regulators, , or residual solvents~~ by a method other than mass spectrometry, the resolution of chromatographic peaks is maintained so that the height of the valley between ~~the~~ two chromatographic peaks is less than 50% of the ~~average of the two peak heights~~ lower peak height; and
2. For testing by mass spectrometry methods, the resolution of chromatographic peaks is maintained so that the height of the valley between two chromatographic peaks is less than 50% of the average of the two peak heights.

N. A technical laboratory director shall ensure that confirmation for testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, or residual solvents by a method other than mass spectrometry:

1. Is performed using:
    a. A second column:
        i. That has a stationary phase dissimilar to the stationary phase in the primary column, and
        ii. From which the analyte is eluted in a different order than from the primary column;
    b. A different instrument type, such as gas chromatography followed by mass spectrometry;
    c. Gas chromatography with two different types of detectors; or
    d. Other recognized confirmation techniques;
2. Meets the applicable criteria in subsections (D) through (M); and
3. Includes as part of the confirmation of the analyte:
    a. An evaluation of the agreement of the quantitative values of the results from both methods of testing; and
    b. Determination of the relative percent difference between the values.

O. If the relative percent difference between the values obtained according to subsection (N) is more than 40%, a technical laboratory director shall ensure that:

1. The chromatograms are checked to see if an obviously overlapping peak is causing an erroneously high result, and the chromatographic conditions are reviewed; and

2. Either:
    a. If a problem is found with one of the tests, the result from the other test is reported; and
    b. If there is no evidence of a chromatographic problem, the higher result is reported.

P. A technical laboratory director may release testing results that are scientifically valid and defensible, according to R9-17-404.06(B)(3), with the following data qualifier notations if:

1. The target analyte detected in the calibration blank required in subsection (F)(1)(c) or the method blank specified in subsection (K)(1) is at or above the limit of quantitation, but the sample result:
    a. For potency testing, is below the limit of quantitation – B1; or
    b. When testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, mycotoxins, heavy metals, or residual solvents, is below the maximum allowable concentration in Table 3.1 for the analyte – B2;
2. The limit of quantitation and the sample results were adjusted to reflect sample dilution - D1;
3. The relative intensity of a characteristic ion in a sample analyte exceeded the acceptance criteria in subsection (L)(1) with respect to the reference spectra, indicating interference – I1;
4. When testing for pesticides, fungicides, ~~herbicides,~~ growth regulators, mycotoxins, heavy metals, or residual solvents, the percent recovery of a laboratory control sample is greater than the acceptance limits in subsection (K)(2)(c), but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 for the analytes in the sample – L1;
5. The recovery from the matrix spike in subsection (K)(4) was:
    a. High, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M1,
    b. Low, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M2, or
    c. Unusable because the analyte concentration was disproportionate to the spike level, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M3;
6. The analysis of a spiked sample required a dilution such that the spike recovery calculation does not provide useful information, but the recovery from the associated

laboratory control sample in subsection (K)(2) was within acceptance criteria – M4;

7. The analyte concentration was determined by the method of standard addition, in which the standard is added directly to the aliquots of the analyzed sample – M5;
8. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) – N1;
9. The relative percent difference for the laboratory control sample and duplicate exceeded the limit in subsection (K)(3), but the recovery in subsection (K)(2) was within acceptance criteria – R1;
10. The relative percent difference for a sample and duplicate exceeded the limit in subsection (O) – R2; or
11. The recovery from initial or continuing calibration verification standards ~~exceeded~~ is greater than the acceptance limits in subsection (H)(2) or (J)(1)(b) as applicable, but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 for the analytes in the sample – V1.

Q. A technical laboratory director shall include in the final report of testing, according to R9-17-404.06(B)(3)(d)(iii), the following data qualifier notations if:

1. Sample integrity was not maintained – Q1;
2. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices – Q2; or
3. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 – Q3.

R. For batch analysis of samples to determine potency, a technical laboratory director may check precision by using either a duplicate laboratory control sample or a duplicate sample prepared from the medical marijuana or marijuana product being tested, according to requirements in subsections (K)(2) and (3).

S. A technical laboratory director shall ensure that the reporting units for:

1. Pesticides, fungicides, ~~herbicides,~~ growth regulators, heavy metals, or residual solvents are in parts per million (ppm);
2. Mycotoxins are according to R9-17-404.04(I)(4); and
~~2.~~3. Potency are:
    a. In either:
        i. Percent (w/w) relative to the bulk plant material or marijuana product, as applicable~~.~~; or
        ii. Number of milligrams per designated unit; and

b. For:

i. Total tetrahydrocannabinol, the sum of tetrahydrocannabinolic acid (THC-A), multiplied by 0.877, and delta-9-tetrahydrocannabinol (Δ9-THC); and

ii. Total cannabidiol, the sum of cannabidiolic acid (CBD-A), multiplied by 0.877, and cannabidiol (CBD).

R9-17-404.04. Method Criteria and References for Analyses for Microbial Contaminants

A. To perform laboratory testing for the microbial contaminants in Table 3.1, a laboratory shall use an applicable method:

1. Described in:

a. The Bacteriological Analytical Manual (BAM), 2019, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.fda.gov/food/laboratory-methods-food/bacteriological-analytical-manual-bam; or

b. AOAC Official Methods of Analysis, 21st Edition, 2019, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.aoac.org/official-methods-of-analysis-21st-edition-2019; ~~and~~

2. Validated according to, as applicable:

a. AOAC - Appendix J: Guidelines for Validation of Microbiological Methods for Food and Environmental Surfaces, 2012, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_j.pdf;

b. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_k.pdf; ~~or~~

c. ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1__Guideline.pdf or https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology;

d. AOAC SMPR® 2019.001 - Standard Method Performance Requirements (SMPRs®) for Detection of *Aspergillus* in Cannabis and Cannabis Products, which is incorporated by reference, includes no future editions or amendments,

and is available at https://www.aoac.org/wp-content/uploads/2020/11/SMPR202019_001.pdf; or

e. AOAC SMPR® 2020.002 - Standard Method Performance Requirements (SMPRs®) for Detection of *Salmonella* species in Cannabis and Cannabis Products, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.aoac.org/wp-content/uploads/2020/07/SMPR-2020_002.pdf;

3. For *Escherichia coli* testing, having a limit of quantitation of at least 10 colony forming units per gram; and

4. If applicable, meeting the requirements in subsection (I)(2) or (3).

B. A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product for microbial contaminants are:

1. Set up, calibrated, and verified according to:
   a. Manufacturer's acceptance criteria; and
   b. Requirements for the specific method, as specified in subsection (A)(1)(a) or (b), as applicable;
2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, 6.3: Facilities and Environmental Conditions, 6.4: Equipment, 7.7: Ensuring the Validity of Results, and Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.aoac.org/aoac-accreditation-guidelines-for-laboratories-alacc; and
3. Applicable for the analytes to be tested.

C. A technical laboratory director shall ensure that:

1. The organisms required as controls are checked, as appropriate for their application:
   a. To ensure there is no contamination with other organisms,
   b. For verification of biochemical or other biological characteristics, and
   c. To ascertain the number of organisms; and
2. Documentation is maintained of the:
   a. Checking required in subsection (C)(1), and
   b. Traceability of the organisms in subsection (C)(1) from date of possession.

D. A technical laboratory director shall ensure that for an initial demonstration of capability:

1. Before implementing a method, at least four replicate reference samples for each analyte are:

a. Spiked with control organisms at an amount allowing for quantitation, and

b. Taken through the entire sample preparation and analysis process;

2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and

3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.

E. A technical laboratory director shall ensure that each batch of media or reagent:

1. Is examined to ensure it is suitable for use;

2. If externally prepared, has a certificate of meeting quality control standards, issued by the manufacturer, before the batch of media or reagent is used;

3. If internally prepared, has documentation of:

a. Instructions for preparation;

b. Traceability to dehydrated media or reagent concentrate;

c. Sterility, including, as applicable:

i. Autoclave records showing the date, run number, autoclave identifier, nature of the material being autoclaved, time at desired temperature, and name of the laboratory agent starting the autoclave; and

ii. For another sterilization method, records showing the date, type of sterilization method, nature of the material being sterilized, confirmation of the sterilization as applicable to the method, and name of the laboratory agent initiating the sterilization method;

d. Checking for the following, as applicable, including the name of the laboratory agent who performed the check and date of the check:

i. pH,

ii. Appearance,

iii. Fill volumes,

iv. Batch size, and

v. Quantity; and

4. Undergoes quality control verification, as applicable, including the name of the laboratory agent who performed the verification and date of verification, for:

a. The ability of media to sustain growth of the organism for which the media will be used;

b. If applicable, the ability of media to select for specific organisms or characteristics of an organism;

c. The ability of a reagent to function as intended; and

d. Sterility of the media or reagent before use.

F. If test kits or other identification systems are used for laboratory testing, a technical laboratory director shall ensure that:

1. Each lot of test kits or other identification systems undergoes quality control verification before use, including the name of the laboratory agent who performed the verification and date of verification, for:

   a. Having a certificate of meeting quality control standards, issued by the manufacturer; and

   b. Passing a visual inspection of physical characteristics;

2. If an identification system is intended to speciate organisms, the identification system is tested with at least one control organism appropriate for the identification system to confirm acceptability; and

3. For testing using ELISA:

   a. The ELISA testing calibration curve has at least four standards;

   b. The standards in subsection (F)(3)(a) bracket the maximum allowable contaminants in Table 3.1 for the analyte; and

   c. For linear and non-linear calibration models, the coefficient of determination (r^2) is greater than or equal to ~~0.99~~ 0.990 with no rounding.

G. A technical laboratory director shall ensure that:

1. For testing for *Aspergillus* with a plating method:

   a. One of the following plating media is used:

      i. Malt extract agar, BAM Media M182;

      ii. Dichloran rose bengal chloramphenicol agar, BAM Media M183: or

      iii. Potato dextrose agar with rose bengal and chloramphenicol; and

   b. Petrifilm™, Simplate™, or another pre-made plate that is unsuitable for growing spreading molds is not used; ~~and~~

2. For testing for mycotoxins by any method, at least a 0.5 g sample is tested~~.~~;

3. For testing for *Aspergillus* or *Salmonella*, the samples are enriched using a validated AOAC method; and

4. For samples that test "Detected" for *Aspergillus* or *Salmonella*:

   a. A log is maintained identifying the samples, and

b. A sample is only retested when quality control standards have failed or when recommended by the instrument manufacturer.

H. A technical laboratory director shall include in the final report of testing, according to R9-17-404.06(B)(3)(d)(iii), the following data qualifier notations if:

1. The limit of quantitation and the sample results were adjusted to reflect sample dilution - D1;
2. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) – N1;
3. Sample integrity was not maintained – Q1;
4. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices – Q2; or
5. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 – Q3.

I. A technical laboratory director shall ensure that:

1. The reporting units for *Escherichia coli* are colony forming units per gram (CFU/g);
2. Reporting for *Salmonella* is "Detected" or "Not detected" in one gram;
3. Reporting for *Aspergillus* is "Detected" or "Not detected" in one gram; and
4. Reporting for mycotoxins includes:
   a. Total aflatoxins in units of micrograms per kilogram (µg/kg), and
   b. Ochratoxin A in units of micrograms per kilogram (µg/kg).

R9-17-404.05. Quality Assurance

A. An owner holding a laboratory registration certificate or applicant shall ensure that the analytical data produced at the owner's or applicant's laboratory are of known and acceptable precision and accuracy, as prescribed by the method criteria for each analyte in R9-17-404.03 or R9-17-404.04, and are scientifically valid and defensible.

B. An owner holding a laboratory registration certificate or applicant shall establish, implement, and comply with a written quality assurance plan that contains the following and is available at the laboratory for Department review:

1. A title page identifying the laboratory and date of review and including the technical laboratory director's signature of approval;
2. A table of contents;
3. An organization chart or list of the laboratory personnel, including names, lines of authority, and identification of principal quality assurance personnel;
4. A copy of the current laboratory registration certificate and a list of approved parameters;

5. A statement of quality assurance objectives, including data quality objectives with precision and accuracy goals and the criteria for determining the acceptability of each testing;
6. Specifications for preservation of samples;
7. A procedure for documenting laboratory receipt of samples and tracking of samples during laboratory testing;
8. A procedure for analytical instrument calibration, including frequency of calibration and complying with the requirements for calibration in subsection (D);
9. A procedure for testing data reduction and validation and reporting of final results, including the identification and treatment of data outliers, the determination of the accuracy of data transcription, and all calculations;
10. If using control limits derived by the laboratory as a basis for determining acceptance of a testing result, a procedure to ensure that the control limits are:
    a. Statistically significant, valid, and defensible; and
    b. Updated at least every 12 months;
11. A statement of the frequency of all quality control checks;
12. A statement of the acceptance criteria for all quality control checks;
13. Preventive maintenance procedures and schedules;
14. Assessment procedures for data acceptability, including appropriate procedures for manual integration of chromatograms and when manual integration is inappropriate;
15. Corrective action procedures to be taken when results from analytical quality control checks are unacceptable, including steps to demonstrate the presence of any interference if the precision, accuracy, or limit of quantitation of the reported testing result is affected by the interference; and
16. Procedures for chain-of-custody documentation, including procedures for the documentation and reporting of any deviation from the sample handling or preservation requirements.

C. An owner holding a laboratory registration certificate or applicant shall ensure that a laboratory's written quality assurance plan is a separate document available at the laboratory and includes all of the components required in subsection (B), but an owner or applicant may satisfy the components required in subsections (B)(3) through ~~(15)~~ (16) through incorporating by reference provisions in separate documents, such as standard operating procedures.

D. An owner holding a laboratory registration certificate or applicant shall:

1. Have available at the laboratory all methods, equipment, reagents, and supplies necessary

for the testing for which the owner or applicant is approved or is requesting approval;

2. Use only reagents of a grade equal to or greater than that required by the method criteria in R9-17-404.03 or R9-17-404.04, and document the use of the reagents;
3. Maintain and require each laboratory agent performing testing on medical marijuana or a marijuana product to comply with a complete and current standard operating procedure that meets the requirements for each method, as specified in R9-17-404.03 or R9-17-404.04, which shall include at least:
    a. A description of all procedures to be followed, including the recording of the information required according to R9-17-404.06(B)(1)(g) and (k), when the method is performed;
    b. A list of the concentrations for calibration standards, check standards, and spikes;
    c. Requirements for instrumental conditions and set up;
    d. A requirement for frequency of calibration;
    e. The quantitative methods to be used to calculate the final concentration of an analyte in samples, including any factors used in the calculations and the calibration algorithm used; and
    f. Requirements for preventative maintenance;
4. Calibrate each instrument as required by the standard operating procedure, as specified in R9-17-404.03 or R9-17-404.04, for which the equipment is used;
5. Maintain calibration documentation, including documentation that demonstrates the calculations performed using each calibration model;
6. Develop, document, and maintain a current limit of quantitation, as specified in R9-17-404.03, for each compliance parameter for each instrument;
7. For each parameter and analyte tested at the laboratory use the quality control acceptance criteria specified according to R9-17-404.03, R9-17-404.04, and Table 3.1;
8. Discard or segregate all expired standards or reagents;
9. Maintain a record showing the traceability of reagents; and
10. Ensure that a calibration model is not used or changed to avoid necessary instrument maintenance.

E. Except as provided in subsection (F), an owner holding a laboratory registration certificate or applicant shall ensure that each laboratory standard operating procedure is a separate document available at the laboratory and includes all of the components required in subsection (D)(3).

F. An owner holding a laboratory registration certificate or applicant may satisfy the components required in subsections (D)(3)(e) and (f) through incorporating by reference provisions in separate

documents, such as other standard operating procedures.

R9-17-404.06. Operations

A. A technical laboratory director shall ensure that:

1. A sample of medical marijuana or a marijuana product accepted at the technical laboratory director's laboratory is analyzed:
   a. Either:
      i. At the laboratory with methods approved by the Department;; or
      ii. For testing of parameters or analytes that the laboratory is not approved by the Department to conduct, at another laboratory with an approval for testing issued by the Department; ~~and~~
   b. As received; and
   c. Within 10 calendar days after receipt;
2. If an instrument or equipment used for testing medical marijuana or a marijuana product has a mechanism to track any changes made to testing results, the tracking mechanism is installed and activated;
3. The facility and utilities required to operate equipment and perform testing of medical marijuana or marijuana products are maintained;
4. Environmental controls are maintained within the laboratory to ensure that laboratory environmental conditions do not affect analytical results beyond quality control limits established for the methods performed at the laboratory;
5. Storage, handling, and disposal of hazardous materials at the laboratory are in accordance with all state and federal regulations;
6. The laboratory complies with all applicable federal, state, and local occupational safety and health regulations; and
7. The following information is maintained for all laboratory agents providing supervisory, quality assurance, or analytical functions related to testing of medical marijuana or a marijuana product:
   a. A summary of each laboratory agent's education and professional experience;
   b. Documentation of each laboratory agent's applicable certifications and specialized training;
   c. Information related to the laboratory agent's registry identification card;
   d. Documentation of each laboratory agent's review of the quality assurance plan required under R9-17-404.05(B) and the methods and laboratory standard operating procedures for all testing of marijuana or marijuana products

performed by the laboratory agent or for which the laboratory agent has supervisory or quality assurance responsibility;

e. Documentation of each laboratory agent's completion of training on the use of equipment and of proper laboratory technique, including the name of the laboratory agent, the name of the instructor, the duration of the training, and the date of completion of the training;

f. Documentation of each laboratory agent's completion of training classes, continuing education courses, seminars, and conferences that relate to the testing procedures used by the laboratory agent for testing of marijuana or marijuana products;

g. Documentation of each laboratory agent's completion of initial demonstration of capability, as required in R9-17-404.03(D)(3) or R9-17-404.04(D)(3), for each approved method performed by the laboratory agent;

h. Documentation of each laboratory agent's performance of proficiency testing ~~or accuracy testing, as applicable~~; and

i. Documentation of each laboratory agent's completion of training related to instrument calibration that includes:

i. Instruction on each calibration model that the laboratory agent will use or for which the laboratory agent will review data;

ii. For each calibration model in subsection ~~(A)(7)(i)~~ (A)(7)(i)(i), description of the specific aspects of the calibration model that might compromise the data quality, such as detector saturation, lack of detector sensitivity, the calibration model's not accurately reflecting the calibration points, inappropriate extension of the calibration range, weighting factors, and dropping of mid-level calibration points without justification; and

iii. Instruction that a calibration model shall not be used or changed to avoid necessary instrument maintenance.

B. A technical laboratory director shall ensure that:

1. A testing record for marijuana or marijuana products contains:

a. Sample information, including the following:

i. A unique sample identification assigned at the laboratory;

ii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the amount, strain, and batch

number;

iii. The sample collection date and time; ~~and~~

iv. The type of testing to be performed, including whether the testing is to satisfy the requirement in R9-17-317.01(A) or for a dispensary's information only; and

v. The analytes to be tested for, as specified by the dispensary, laboratory, qualifying patient, or designated caregiver, identified according to subsection (B)(1)(c), submitting the sample to the laboratory;

b. A color picture of the sample as submitted;

c. The name and registry identification number of the dispensary, qualifying patient, or designated caregiver submitting the sample to the laboratory;

d. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;

e. The date and time of receipt of the sample at the laboratory;

f. The name and registry identification number of the laboratory agent who received the sample at the laboratory;

g. The dates and times of testing, including the date and time of each critical step;

h. Whether testing results related to a sample were changed;

i. If testing results related to a sample were changed, what was changed, the name of the laboratory agent who changed the testing results, the time and date the data were changed, and why the testing results were changed;

j. If testing results were changed due to retesting:

i. What was used or done to the sample, and

ii. The original and changed testing results;

k. The actual results of testing, including all raw data, work sheets, and calculations performed;

l. The actual results of quality control data validating the testing results, including the calibration and calculations performed;

m. The name of each laboratory agent who performed the testing; and

n. A copy of the final report;

2. A testing result for medical marijuana or a marijuana product that is known to be inaccurate is not reported; and

3. Except as specified in subsection (C) or (D) as applicable, a final report of testing of marijuana or marijuana products contains:

a. The name, address, and telephone number of the laboratory;

b. The registry identification number assigned to the laboratory by the Department;

c. Actual scientifically valid and defensible results of testing of a sample of medical marijuana or a marijuana product in appropriate units of measure, obtained in accordance with R9-17-404.03, R9-17-404.04, and the quality assurance plan;

d. As applicable:

i. A statement that testing results were obtained according to requirements in the quality assurance plan in R9-17-404.05, in the applicable standard operating procedure, and in R9-17-404.03 or R9-17-404.04;

ii. A description of any variances from the requirements in the quality assurance plan in R9-17-404.05, the applicable standard operating procedure, R9-17-404.03, or R9-17-404.04 made to ensure scientifically valid and defensible testing results, and the reason for the variance; or

iii. A qualifier, according to R9-17-404.03(P) or (Q) or R9-17-404.04(H), as applicable, located adjacent to the name of the analyte or testing result to which the qualifier pertains;

e. A list of each method used to obtain the reported results;

f. Sample information, including the following:

i. The unique sample identification assigned at the laboratory;

ii. A color picture of the sample as submitted;

iii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the ~~amount,~~ strain and batch number;

iv. The sample collection date and time;

v. The name and registry identification number of the dispensary, laboratory, qualifying patient, or designated caregiver submitting the sample to the laboratory; and

~~vi. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;~~

vi. Any changes made to the information recorded according to subsection (B)(1)(a) since sample submission;

g. The date of testing for each parameter reported;

h. The date of the final report; and

i. The technical laboratory director's or designee's signature.

C. If a sample of medical marijuana or a marijuana product accepted at a laboratory is analyzed at another laboratory, as allowed according to R9-17-404.06(A)(1)(a)(ii), a technical laboratory director shall ensure that the final report of testing required in subsection (B)(3) includes a copy of the final report of testing from each laboratory to which the laboratory accepting the sample from a dispensary sent a portion of the sample for testing of parameters or analytes that the laboratory is not approved by the Department to conduct.

D. If a final report of testing issued according to subsection (B)(3) needs to be changed, amended, or reissued, a technical laboratory director shall ensure that a changed, amended, or reissued report of testing is generated by the laboratory and includes:

1. The date of the changed, amended, or reissued report of testing;
2. A statement that the changed, amended, or reissued report is an amendment to the original final report of testing, including any unique number or other designator given by the laboratory to the original final report of testing;
3. If it is necessary to issue a completely new final report of testing, the information required in subsection (B)(3); and
4. The change to the information provided in the original final report of testing and, where appropriate, the reason for the change, located either:
   a. Adjacent to the testing result to which the change pertains, or
   b. On the same page of the final report of testing with an indicator located adjacent to the testing result to which the change pertains.

E. For a sample of marijuana or a marijuana product accepted at the technical laboratory director's laboratory, a technical laboratory director shall ensure that the final report of testing in subsection (B)(3):

1. For a sample received from a dispensary, is sent to the dispensary within 10 calendar days after receipt of the sample;
2. For a sample received from another laboratory according to subsection (A)(1)(a)(ii), is sent to the other laboratory from which the sample was sent within seven calendar days after receipt of the sample;
3. For a sample received from another laboratory according to R9-17-317.01(C), is sent to the dispensary requesting retesting within seven calendar days after receipt of the sample; and
4. For a sample received from a qualifying patient or designated caregiver as recorded according to subsection (B)(1)(c), is sent to the qualifying patient or designated caregiver

within 10 calendar days after receipt of the sample.

R9-17-404.07. Adding or Removing Parameters for Testing

A. During the term of a laboratory registration certificate, an owner may request to have one or more parameters:

1. Added to the laboratory registration certificate, or
2. Removed from the laboratory registration certificate.

B. To request a change to one or more parameters, an applicant shall submit to the Department:

1. The following information in a Department-provided format:
   a. The name, address, and telephone number of the applicant;
   b. The name, address, and telephone number of the laboratory for which the change is requested;
   c. If requesting the removal of a parameter, identification of the parameter to be removed;
   d. If requesting the addition of a parameter:
      i. The analyte to be tested for~~.~~;
      ii. The instruments and equipment to be used for testing~~.~~;
      iii. The software to be used at the laboratory for instrument control and data reduction interpretation~~.~~; and
      iv. The limit of quantitation, if applicable;
   e. Whether the laboratory is ready for an inspection by the Department;
   f. If the laboratory is not ready for an inspection by the Department, the date the laboratory will be ready for an inspection by the Department;
   ~~e.~~g. An attestation that the information provided to the Department to apply for the addition of a parameter is true and correct; and
   ~~f.~~h. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. The following for each parameter requested to be added:
   a. A copy of current accreditation;
   b. A copy of a proficiency testing report~~, if applicable, or accuracy testing documentation~~; ~~and~~
   c. A copy of the standard operating procedure; and
   d. Documentation of the initial demonstration of capabilities, according to R9-17-404.03(D); and
3. If applicable, any changes to the quality assurance plan in R9-17-404.05(B) made due to

the addition or removal of the parameter.

C. The Department may conduct a laboratory inspection during the substantive review period for a request to have one or more parameters added to a laboratory registration certificate.

D. The Department shall process a request to have one or more parameters added to a laboratory registration certificate as provided in R9-17-107.

R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card

To obtain a laboratory agent registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the owner shall submit to the Department the following for each laboratory agent:

1. An application in a Department-provided format that includes:
    a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
    b. The laboratory agent's residence address and Arizona mailing address;
    c. The county where the laboratory agent resides;
    d. The laboratory agent's date of birth;
    e. The identifying number on the applicable card or document in subsection ~~(5)(a)~~ (4)(a) through (e);
    f. The name and registry identification number of the laboratory; and
    g. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
2. An attestation signed and dated by the laboratory agent that the laboratory agent:
    a. Either:
        i. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
        ii. Is deemed to not have been convicted of an excluded felony offense through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and
    b. Will not test medical marijuana and medical marijuana products for:
        i. A dispensary, related medical marijuana business entity, or management company that the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
        ii. A designated caregiver who the laboratory has a direct or indirect familial or financial relationship with;

~~3.~~ ~~One of the following:~~

~~a.~~ ~~A statement that the laboratory agent does not currently hold a valid registry identification card, or~~

~~b.~~ ~~The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;~~

~~4.~~3. A statement in a Department-provided format, signed by the laboratory agent, pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

~~5.~~4. A copy of the laboratory agent's:

a Arizona driver's license issued on or after October 1, 1996;

b. Arizona identification card issued on or after October 1, 1996;

c. Arizona registry identification card;

d. Photograph page in the laboratory agent's U.S. passport or a U.S. passport card; or

e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:

i. Birth certificate verifying U.S. citizenship,

ii. U.S. Certificate of Naturalization, or

iii. U.S. Certificate of Citizenship;

~~6.~~5. A current photograph of the laboratory agent;

~~7.~~6. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:

a. The laboratory agent's fingerprints on a fingerprint card that includes:

i. The laboratory agent's first name; middle initial, if applicable; and last name;

ii. The laboratory agent's signature;

iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;

iv. The laboratory agent's address;

v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;

vi. The laboratory agent's date of birth;

vii. The laboratory agent's Social Security number;

viii. The laboratory agent's citizenship status;

ix. The laboratory agent's gender;

x. The laboratory agent's race;

xi. The laboratory agent's height;

xii. The laboratory agent's weight;

xiii. The laboratory agent's hair color;

xiv. The laboratory agent's eye color; and

xv. The laboratory agent's place of birth; ~~or~~

b. If the laboratory agent's fingerprints and information required in subsection ~~(7)(a)~~ (6)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; or

c. Documentation that the laboratory agent has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

~~8.~~7. The applicable fee in R9-17-102 for applying for a laboratory agent registry identification card.

R9-17-406. Submitting an Application to Renew a Laboratory Agent's Registry Identification Card

To renew a laboratory agent's registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the laboratory shall submit to the Department, at least 30 calendar days before the expiration of the laboratory agent's registry identification card, but no more than 90 days before the expiration date of the laboratory's agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
   a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The laboratory agent's residence address and Arizona mailing address;
   c. The county where the laboratory agent resides;
   d. The laboratory agent's date of birth;
   e. The registry identification number on the laboratory agent's current registry identification card;
   ~~f. The identifying number on the applicable card or document in subsection (6)(a) through (e);~~

~~g.~~f. The name and registry identification number of the laboratory; and

~~h.~~g. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;

2. If the laboratory agent's name in subsection (1)(a) is not the same name as on the laboratory agent's current registry identification card, one of the following with the laboratory agent's new name:

   a. An Arizona driver's license,

   b. An Arizona identification card, or

   c. The photograph page in the laboratory agent's U.S. passport or a U.S. passport card;

3. An attestation signed and dated by the laboratory agent that the laboratory agent:

   a. Either:

      i. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or

      ii. Is deemed to not have been convicted of an excluded felony offense through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

   b. Will not test medical marijuana and medical marijuana products for:

      i. A dispensary, related medical marijuana business entity or management company the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or

      ii. A designated caregiver the laboratory has a direct or indirect familial or financial relationship with;

~~4.~~ ~~One of the following:~~

   ~~a.~~ ~~A statement that the laboratory agent does not currently hold a valid registry identification card, or~~

   ~~b.~~ ~~The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;~~

~~5.~~4. A statement in a Department-provided format signed by the laboratory agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

~~6.~~ ~~A copy of the laboratory agent's:~~

   ~~a~~ ~~Arizona driver's license issued on or after October 1, 1996;~~

~~b. Arizona identification card issued on or after October 1, 1996;~~

~~c. Arizona registry identification card;~~

~~d. Photograph page in the laboratory agent's U.S. passport; or~~

~~e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:~~

~~i. Birth certificate verifying U.S. citizenship,~~

~~ii. U.S. Certificate of Naturalization, or~~

~~iii. U.S. Certificate of Citizenship;~~

~~7.~~5. A current photograph of the laboratory agent;

~~8.~~6. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:

a. The laboratory agent's fingerprints on a fingerprint card that includes:

i. The laboratory agent's first name; middle initial, if applicable; and last name;

ii. The laboratory agent's signature;

iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;

iv. The laboratory agent's address;

v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;

vi. The laboratory agent's date of birth;

vii. The laboratory agent's Social Security number;

viii. The laboratory agent's citizenship status;

ix. The laboratory agent's gender;

x. The laboratory agent's race;

xi. The laboratory agent's height;

xii. The laboratory agent's weight;

xiii. The laboratory agent's hair color;

xiv. The laboratory agent's eye color; and

xv. The laboratory agent's place of birth; ~~or~~

b. If the laboratory agent's fingerprints and information required in subsection ~~(8)(a)~~ (6)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry

identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; or

c. Documentation that the laboratory agent has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

~~9.~~7. The applicable fee in R9-17-102 for applying to renew a laboratory agent's registry identification card.

R9-17-407. Inventory Control System

A. A laboratory shall not accept submissions of marijuana or marijuana products for testing from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.

B. A technical laboratory director ~~laboratory~~ shall designate in writing a laboratory agent who has oversight of the laboratory's marijuana inventory control system.

C. A technical laboratory director shall establish and implement an inventory control system for the laboratory's medical marijuana and marijuana products that documents:

1. The following amounts in appropriate units:
   a. Each day's beginning inventory of medical marijuana and marijuana products~~;~~;
   b. Medical marijuana and marijuana products accepted for testing, including verifying the amount of each sample of medical marijuana or marijuana product accepted for testing;
   c. The portions of a sample of medical marijuana or a marijuana product removed for testing with the name of the laboratory agent removing each portion~~;~~;
   d. Medical marijuana and marijuana products transferred to or from another laboratory for testing of parameters or analytes that the laboratory receiving a sample from a dispensary is not approved by the Department to conduct~~;~~;
   e. Medical marijuana and marijuana products transferred to another laboratory at the request of a dispensary according to R9-17-317.01(C)~~;~~;
   f. Medical marijuana or marijuana products that were disposed of, including verifying that the amount of medical marijuana or marijuana product being disposed of is consistent with the original amount accepted for testing minus the amounts used for testing or transferred to another laboratory; and
   g. The day's ending medical marijuana and marijuana products inventory;
2. The chain of custody for each sample of medical marijuana or a marijuana product submitted to the laboratory for testing;
3. Any damage to a sample's container or possible tampering;

4. As applicable, for submissions of marijuana and marijuana products for testing:
    a. A description of the submitted marijuana or marijuana products including the amount, strain and batch number;
    b. The name and registry identification number of the dispensary that submitted the marijuana or marijuana products;
    c. The name and registry identification number of the dispensary agent that submitted the marijuana or marijuana products;
    d. The name and registry identification number of the qualifying patient that submitted the marijuana or marijuana products;
    e. The name and registry identification number of the designated caregiver that submitted the marijuana or marijuana products;
    f. The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the laboratory; and
    g. The date of acquisition; and
    ~~h. The date of each test; and~~
    ~~i. The testing results; and~~
5. For disposal of the remaining sample of medical marijuana or a marijuana product after testing:
    a. The unique sample identification assigned to the sample of medical marijuana or a marijuana product, according to R9-17-404.06(B)(1)(a);
    b. The amount ~~and description~~ of the medical marijuana or marijuana product being disposed of;
    ~~b. The name and registry identification number of the dispensary submitting the sample;~~
    c. Date of disposal;
    d. Method of disposal; and
    e. Name and registry identification number of the laboratory agent responsible for the disposal.

D. The individual designated in subsection (B) shall conduct and document an audit of the laboratory's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.

1. If the audit identifies a reduction in the amount of marijuana or marijuana products in the laboratory's inventory not due to documented causes, the technical laboratory director shall determine where the loss has occurred and take and document corrective action.

2. If the reduction in the amount of marijuana or marijuana products in the laboratory's inventory is due to suspected criminal activity by a laboratory agent, the technical laboratory director shall report the laboratory agent to the Department and to the local law enforcement authorities and document the report.

E. A laboratory shall:

1. Maintain the documentation required in subsections (C) and (D) at the laboratory for at least five years after the date on the document, and
2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

R9-17-408. Security

A. Except as provided in R9-17-404(8), a laboratory shall ensure that access to the area of the laboratory where marijuana or marijuana products are being tested or stored for testing is limited to a laboratory's owners and authorized laboratory agents.

B. A laboratory agent may only transport marijuana or marijuana products submitted for testing to a laboratory having a registry identification number issued under this Chapter.

C. Before transportation to a laboratory, a laboratory agent shall:

1. Complete a trip plan that includes:
   a. The name of the laboratory agent in charge of transporting the marijuana or marijuana products;
   b. The date and start time of the trip;
   c. A description of the marijuana or marijuana products being transported;
   d. Any anticipated stops during the trip, including the locations of the stops and arrival time and departure time for each location; and
   e. The anticipated route of transportation; and
2. Provide a copy of the trip plan in subsection (C)(1) to the laboratory.

D. During transportation to the laboratory, a laboratory agent shall:

1. Carry a copy of the trip plan in subsection (C)(1) with the laboratory agent for the duration of the trip;
2. Use a vehicle:
   a. ~~without~~ Without any marijuana identification;
   b. Equipped with a global positioning system or other means of tracking the location of the vehicle;
   c. With an operational video surveillance system and recording equipment that:

i. Shows the interior of the vehicle, including the driver's seat and location of the marijuana, marijuana plants, or marijuana products being transported;

ii. Is turned on for the duration of a trip while medical marijuana or a marijuana product is in the vehicle; and

iii. Either stores the recording for at least 30 calendar days or transmits the recorded images at the time of recording to another location, where the recorded images are stored for at least 30 calendar days; and

d. With a locked compartment in which any marijuana or marijuana products being transported may be stored during a trip;

3. Have a means of communication with the laboratory; and

4. Notate the arrival time and departure time for each stop; and

~~4.~~5. Ensure that the marijuana or marijuana products are stored in the locked compartment specified in subsection (D)(2)(d) and are not visible.

E. After transportation, a laboratory agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).

F. If a dispensary agent transports medical marijuana or a marijuana product to a laboratory for testing, the laboratory shall require that a copy of the trip plan be provided by the dispensary before accepting the medical marijuana or marijuana product for testing.

G. A laboratory shall:

1. Maintain the documents required in subsections (C)(2), (E), and (F); and

2. Provide a copy of the documents required in subsections (C)(2), (E), and (F) to the Department for review upon request.

H. To prevent unauthorized access to marijuana or marijuana products at the laboratory for testing, the laboratory shall have the following:

1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:

a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device;

b. Exterior lighting to facilitate surveillance;

c. Electronic monitoring including:

i. At least one 19-inch or greater call-up monitor;

ii. A video printer capable of immediately producing a clear still photo from

any video camera image;

iii. Video cameras:

(1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building; and

(2) Having a recording resolution of at least 704 x 480 or the equivalent;

iv. A video camera in each area of the laboratory where marijuana or marijuana products are being tested or stored for testing capable of identifying any activity occurring within the area in low light conditions;

v. Storage of video recordings from the video cameras for at least 30 calendar days;

vi. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and

vii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and

d. Panic buttons in the interior of each building; and

2. Policies and procedures that:

a. Restrict access to the areas of the laboratory that contain marijuana or marijuana products and, if applicable, to authorized individuals only;

b. Provide for the identification of authorized individuals; and

c. Prevent loitering.

R9-17-409. Physical Plant

A. A laboratory shall ensure that designated storage areas for marijuana or marijuana products or materials used in direct contact with marijuana or marijuana products are:

1. Separate from storage areas for toxic or flammable materials; and

2. Maintained in a manner to prevent:

a. Microbial contamination and proliferation, and

b. Contamination or infestation by insects or rodents.

B. A laboratory shall ensure that:

1. Storage areas are designated for:

a. Medical marijuana and marijuana products awaiting testing;

b. Reagents, standards, and other testing relates chemicals or materials; and

c. The remaining portions of tested medical marijuana and marijuana products retained according to R9-17-404(5)(c)(vi);

2. Designated storage areas are monitored to ensure that a:

a. Room temperature storage area is maintained between 20°C and 28°C,

b. Refrigerated storage area is maintained between 2°C and 8°C, and

c. Freezer storage area is maintained at or less than -20°C;

3. A storage area for the storage of medical marijuana or marijuana product awaiting testing is labelled to indicate the temperature range and types of medical marijuana or marijuana products to be stored in the storage area;

4. Medical marijuana or a marijuana product awaiting testing is stored at an appropriate temperature, as specified on the packaged sample;

5. Reagents, standards, and other testing ~~relates~~ related chemicals or materials are stored according to manufacturer's directions; and

6. The remaining portions of tested medical marijuana and marijuana products are stored in a refrigerated storage area or a freezer storage area to reduce microbial proliferation.

C. A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for microbial contaminants is maintained in a manner to prevent exposure of the medical marijuana or marijuana product to external microbial contaminants.

D. A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for pesticides, fungicides, ~~herbicides,~~ growth regulators, heavy metals, or residual solvents is maintained in a manner to prevent exposure of the medical marijuana or marijuana product to external contamination.

R9-17-410. Denial or Revocation of a Laboratory Registration Certificate

A. The Department shall deny an application for a laboratory registration certificate if:

1. The physical address of the laboratory is within 500 feet of a private school or a public school that existed before the date the laboratory submitted the initial laboratory registration certificate application;

2. An owner:

a. Has been convicted of an excluded felony offense, or

b. Is under 21 years of age;

3. The application or the laboratory does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter;

4. The laboratory acquires marijuana or marijuana products from an individual who or

entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

5. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
6. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
7. The laboratory fails to maintain accreditation.

B. The Department may deny an application for a laboratory registration certificate if an owner of the laboratory provides false or misleading information to the Department.

C. The Department may deny an application for approval of a parameter for testing, submitted according to R9-17-402.01 or R9-17-404.07, if the applicant does not demonstrate compliance with the requirements of this Article related to the parameter or testing of an analyte.

~~**C.**~~**D.** The Department shall revoke a laboratory's registration certificate if:

1. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
2. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
3. An owner has been convicted of an excluded felony offense;
4. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
5. The laboratory fails to maintain accreditation.

~~**D.**~~**E.** The Department may deny an application for a laboratory registration certificate or revoke a laboratory registration certificate if the laboratory does not:

1. Comply with:
   a. The requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
   b. The provisions in a corrective action plan submitted according to ~~R9-17-404.01(E)(2)(b)~~ R9-17-404.01(F)(2)(b) or R9-17-404.02(C)(6)(a), as applicable; or
2. Implement the policies and procedures or comply with the statements provided to the Department with the laboratory's application.

F. The Department may revoke a laboratory's approval of a parameter for testing if the laboratory

does not continue to demonstrate compliance with the requirements of this Article related to the parameter or testing of an analyte.

~~E.~~**G.** If the Department denies a laboratory registration certificate application, the Department shall provide notice to the applicant that includes:

1. The specific reason or reasons for the denial, and
2. All other information required by A.R.S. § 41-1076.

~~F.~~**H.** If the Department revokes a laboratory registration certificate, the Department shall provide notice to the laboratory that includes:

1. The specific reason or reasons for the revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-411. Denial or Revocation of a Laboratory Agent's Registry Identification Card

A. The Department shall deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent does not meet the requirements in A.R.S. § 36-2801.

B. The Department may deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent provides false or misleading information to the Department.

C. The Department shall revoke a laboratory agent's registry identification card if the laboratory agent:

~~1. Uses marijuana, if the laboratory agent does not have a qualifying patient registry identification card;~~

~~2.~~1. Diverts medical marijuana or marijuana products to an individual who or entity that is not allowed to possess medical marijuana pursuant to A.R.S. Title 36, Chapter 28.1; or

~~3.~~2. ~~Has~~ Except as provided in A.R.S. § 36-2804.01(D), has been convicted of an excluded felony offense.

D. The Department may revoke a laboratory agent's registry identification card if the laboratory agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.

E. If the Department denies or revokes a laboratory agent's registry identification card, the Department shall provide notice to the laboratory agent and the laboratory agent's laboratory that includes:

1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES
MEDICAL MARIJUANA PROGRAM

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

July 2023

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES

MEDICAL MARIJUANA PROGRAM

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) Title 36, Chapter 28.1, specifies requirements for the regulation of medical marijuana dispensaries and dispensary agents, as well as for qualifying patients and designated caregivers. The Arizona Department of Health Services (Department) has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 17. Laws 2021, Ch. 439, made changes to the requirements for medical marijuana dispensaries and others regulated under 9 A.A.C. 17. These include allowing an individual to provide a level 1 fingerprint clearance card, issued according to A.R.S. § 41-1758.07 rather than submitting fingerprints for a background check; making changes to medical marijuana testing requirements; requiring the addition of a time frame for testing; and allowing marijuana facility agents to work in dispensaries. In addition, the Department was ordered in Maricopa County Superior Court (Case No. CV2021-003384), to accept applications for nonprofit medical marijuana registration certificates by December 31, 2022. Because of the required timeframe for accepting applications, the Department is carrying out this rulemaking in an iterative manner, and addressed the court order and some other revised requirements that would not impose additional burdens on regulated entities through an expedited rulemaking, effective September 8, 2022. The Department is making other changes, some of which may impose additional burdens on regulated entities, through this regular rulemaking.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

- The Department
- Dispensaries
- Laboratories
- Registry identification cardholders
- Individuals with Post-traumatic Stress Disorder (PTSD)
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes to implement Laws 2021, Ch 439, as well as with other changes identified by the Department or stakeholders as necessary to protect health and safety and provide for the effective enforcement of the rules. Annual cost/revenue changes are designated as minimal when $2,500 or less, moderate when between $2,500 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. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the sections immediately following.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Clarifies requirements in the rules.	None	Significant
	Adds a fee for changing activities conducted at the current location of a dispensary or adding activities at a new location for a dispensary.	None	Minimal-to-substantial
	Clarifies requirements related to the Department's denial or revocation of approval of a parameter for testing.	None	Minimal-to-moderate
	Removes the requirement for inspection of a dispensary or the dispensary's cultivation site to be prescheduled.	None-to-substantial	Significant; none-to moderate
	Makes changes related to the denial or revocation of a laboratory agent's registry identification card.	None	Significant; none-to moderate
B. Privately Owned Businesses			
Dispensaries	Clarifies requirements in the rules.	None	Significant
	Makes changes related to a fee to change activities at a current location or add activities at a new location, consistent with requirements in 9 A.A.C. 18.	None-to-minimal	None
	Makes changes related to the denial of an application based on failure to begin operating	None	Minimal-to substantial
	Removes the requirement for inspection of a dispensary or the dispensary's cultivation site to be prescheduled, to align with statute.	None-to-substantial	None
	Adds wording required on labels, consistent with A.R.S. § 36-2803.02(A).	None-to-moderate	Significant
	Makes changes to inventory control, packaging, and security.	None-to-substantial	Significant
	Makes changes to clarify certain requirements.	Minimal	None
	Makes changes to analytes to be tested for and their acceptance levels and to		

	requirements for a dispensary to specify the analytes to be tested for.	Minimal-to-substantial	Minimal-to-substantial
	Allows for simultaneous retesting of marijuana or a marijuana product, instead of requiring serial testing.	None	Significant
	Clarifies that a dispensary must notify the Department if the dispensary learns of a possible inaccurate final report of testing from another dispensary.	Minimal	None
Laboratories	Clarifies requirements in the rules.	None	Significant
	Removes references to testing for herbicides.	None-to-substantial	None
	Adds a timeline for completion of a final report of testing	None-to-substantial	None
	Makes changes related to the denial or revocation of a laboratory agent's registry identification card.	None	Significant
	Makes changes to the content of an application or policies and procedures related to current accreditation, initial demonstration of capability, and limit of quantitation.	None-to-substantial	Significant
	Clarifies requirements related to the Department's denial or revocation of approval of a parameter for testing.	None-to-substantial	Significant
	Clarifies technical requirements in the rules.	None-to-substantial	Significant; none-to-substantial
	Simplifies technical requirements in the rules.	None-to-minimal	None-to-substantial
	Specifies requirements for final reports of testing.	None-to-moderate	None
	Makes other changes to improve testing	None-to-substantial	Significant
	Makes changes related to proficiency testing and accuracy testing.	None-to-substantial	None
	Makes changes related to analyses for microbial contamination.	None-to-moderate	None-to-moderate
	Makes changes related to dispensaries, including requiring the analytes to be tested for to be specified, removal of requirements for testing for propane or Acequinocyl, and allowing for simultaneous retesting by up to two independent laboratories.	None-to-substantial	Significant
C. Consumers			
Registry identification cardholders	Clarifies requirements in the rules.	None	Significant
	Adds the option of using a U.S. passport card instead of a passport when changing	None-to-minimal	Minimal

	information on a registry identification card, requesting a replacement card, or applying for a laboratory agent card.	None	Significant
	Lowering the maximum level of *E. coli* contamination in edible marijuana or an edible marijuana product and the maximum level of mercury contamination in inhalable marijuana or an inhalable marijuana product.	None	Significant
	Requires dispensing in a container made of material that will not react with or leach into the contents of the container.	None	Significant
	Removes the requirement for an in-person physical examination.	None	None-to-substantial
	Makes changes related to the denial or revocation of a dispensary agent's registry identification card.	None	Significant
	Makes changes to applications, consistent with statutory requirements.	None	None-to-substantial
	Makes changes related to the denial or revocation of a laboratory agent's registry identification card.		
Individuals with Post-traumatic Stress Disorder (PTSD)	Adds Post-traumatic Stress Disorder (PTSD) to the list of debilitating medical conditions.	None	Significant
General public	Improves the rules to protect health and safety.	None	Significant/substantial

- **The Department**

Since April 14, 2011, when the Department implemented the Arizona Medical Marijuana Act, A.R.S. §36-2801 et seq., by adopting the rules in 9 A.A.C. 17 and establishing the Medical Marijuana Program within the Department, the Department has been regulating the use, cultivation, and sale of medical marijuana. Statistics on the Program, including information about active medical marijuana cardholders, dispensaries, and laboratories, are included in reports posted on the Department's website at: https://www.azdhs.gov/licensing/medical-marijuana/index.php#reports. As of the report for May 2023, there were 150,179 registry identification cardholders, including 127,288 qualifying patients, 374 designated caregivers, 643 dispensary agents, and 273 laboratory agents. There are 21,601 facility agents included in the total, but these cards are issued under 9 A.A.C. 18, Adult-use Marijuana Program, and some of these individuals work in establishments regulated under 9 A.A.C. 18, rather than under the rules in 9 A.A.C. 17. Under the rules in 9 A.A.C. 17, there are a total of 137 dispensaries, with 132 operating. There are 20 operating laboratories, with two applications pending.

Many of the changes being made are clarifying the requirements in the rules. The Department anticipates that these clarifications may make the rules easier to understand and provide a significant benefit to all stakeholders, including the Department – especially by potentially reducing the number of questions that may be asked of and the amount of technical assistance provided by the Department. As described below, most of the other changes being made in this rulemaking affect stakeholders other than the Department. However, a few changes may have an economic effect on the Department.

The Department has been trying to reduce discrepancies between the rules in 9 A.A.C. 17 and in 9 A.A.C. 18, when not required by differences in the authorizing statutes for the two sets of rules. One such discrepancy is that the rules in 9 A.A.C. 18 contains a fee for a marijuana establishment to change the approved activities for a marijuana establishment's retail site, cultivation site, or manufacturing site to offset the Department's expenses in ensuring adequate inspection and regulation related to the addition or change. In the rulemaking, this fee is added to the new rules and is consistent with the fee in 9 A.A.C. 18. When the fees related to dispensaries were originally included in R9-17-102, the number and variety of marijuana products were not anticipated. Nor did the Department realize some of the specialized physical plant requirements that would be necessary to ensure the safety of workers in the facilities, the surrounding neighborhoods, and the general public. When a dispensary requests to add or change activities, the Department has incurred costs associated with the review of the request and inspection of the premises, without being able to recoup these costs. This new fee will remedy this situation and may provide the Department with up to a substantial benefit, depending on the number of such requests received.

Another example of a discrepancy is in R9-17-410, in which the Department is clarifying that the Department may deny a laboratory's application for approval of a parameter for testing, submitted according to R9-17-402.01 or R9-17-404.07, if the applicant does not demonstrate compliance with the requirements of this Article related to the parameter or testing of an analyte. Similarly, the new rules clarify that the Department may revoke a laboratory's approval of a parameter for testing if the laboratory does not continue to demonstrate compliance with the requirements of this Article related to the parameter or testing of an analyte. While providing clarity and helping to ensure the accuracy of testing results to improve and protect the health and safety of qualifying patients, these changes also may reduce the number of potentially contested enforcement activities. The Department anticipates that these changes may provide a minimal-to-moderate benefit to the Department.

Another change that may provide a significant benefit to the Department is the removal of the requirement for the Department to preschedule an inspection of a dispensary or the dispensary's cultivation site, to comply with A.R.S. § 36-2806(H). The Department anticipates that the removal of this requirement could result in the Department uncovering more instances in which a dispensary is not in compliance with requirements in the rules, which may have been covered up or not evident

during a prescheduled inspection. The true state of operation of a dispensary is more likely to be determined during an unannounced inspection, which may affect the health and safety of qualifying patients. The Department also believes that they are more likely to result in a dispensary undergoing enforcement activities. The Department anticipates that this change may cause the Department to incur up to substantial costs related to enforcement, but also to receive up to moderate benefits.

The requirements in R9-17-411 were adopted before the implementation of an Adult-use Marijuana Program, with rules in 9 A.A.C. 18, and reflect restrictions on the use of marijuana required in the then-current statutes. Subsection (C)(1) had stated that the "Department shall revoke a laboratory agent's registry identification card if the laboratory agent uses marijuana, if the laboratory agent does not have a qualifying patient registry identification card." This requirement was in conflict with current statutes that allow an adult to use marijuana, without having to have a qualifying patient registry identification card, and is being changed as part of the rulemaking. The rule is also being changed to reflect the provisions in A.R.S. § 36-2804.01(D). The Department anticipates that these changes may provide a significant benefit and, if the amount of technical assistance needing to be provided is reduced, perhaps a minimal-to-moderate benefit to the Department.

- **Dispensaries**

Many of the changes being made as part of this rulemaking are as a result of statutory changes that were endorsed and supported by Arizona's dispensaries. Of the 132 operating dispensaries, all are dually-licensed under the rules in 9 A.A.C. 18. Therefore, any discrepancies between the two sets of requirements may impose burdens on these dispensaries and, except where the discrepancies are a result of statutory differences, are being reduced in this rulemaking, providing a significant benefit. While the Department anticipates that most of these changes to reduce discrepancies may provide a benefit to dispensaries, the addition of a fee, consistent with requirements in Chapter 18, for a dispensary that wants to change activities at a current location or add activities at a new location is anticipated to impose a minimal cost on those dispensaries making such requests. Offsetting these costs is the change specifying that the Department may, rather than shall, deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary did not obtain an approval to operate the dispensary or marijuana establishment, as applicable, within 18 months after the dispensary registration certificate or marijuana establishment license was issued, which may provide up to a substantial benefit to a dispensary.

Another change that reduces discrepancies, but one that may cause a up to a substantial burden on a noncompliant dispensary, is the removal of the requirement for the Department to preschedule an inspection of a dispensary or the dispensary's cultivation site, to comply with A.R.S. § 36-2806(H). Although required by statutory changes, removal of this requirement could result in the Department uncovering instances in which a dispensary is not in compliance with requirements in the rules and of

the dispensary undergoing enforcement activities. Statutory changes also require the Department to specify in the new rules the additional wording required on the label of medical marijuana or a marijuana product, consistent with A.R.S. § 36-2803.02(A). Since dispensaries should already have been complying with the statutory requirement, this change should not cause additional burden on a dispensary, but, instead, the clarification may provide a significant benefit. For a dispensary not already complying with statutes, the Department believes that the requirement could impose a minimal-to-moderate cost on a dispensary.

Several changes are being made related to inventory control and packaging. These include clarifying that a dispensary may acquire or provide medical marijuana or marijuana products from/to a marijuana establishment, as well as transport medical marijuana or marijuana products from the dispensary to a marijuana establishment. In addition, the new rules add a requirement that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is dispensed in a container made of material that will not react with or leach into the medical marijuana or marijuana product, consistent with requirements for providing a sample to a laboratory for testing. Also consistent with requirements for marijuana establishments in 9 A.A.C. 18, the new rules clarify that the loss or theft of marijuana from a cultivation site, not just from a dispensary retail location, must be documented and reported to the appropriate law enforcement agency. The Department anticipates that these changes may cause a dispensary to incur up to a substantial cost increase related to the packaging container, and provide a significant benefit related to inventory control.

Additional changes are being made related to security. The new rules clarify that a dispensary may allow an individual not associated with the dispensary into areas where marijuana is cultivated, processed, manufactured, or stored if the individual is supervised by an authorized individual. Security-related policies and procedures to deter unauthorized removal of marijuana or marijuana products from the premises and provide for authorized individuals are also being clarified. The Department believes that these changes may provide a dispensary with a significant benefit. Consistent with new statutory requirements, security-related requirements for vehicles that transport medical marijuana or marijuana products are being added. Depending on the number of vehicles a dispensary uses, the Department anticipates that these changes may cause a dispensary to incur up to a substantial increase in costs due to the statutorily-required changes.

In the 10 years since the medical marijuana program began in Arizona, the types of activities being conducted by a dispensary has increased as the variety of marijuana products has expanded. For some marijuana products, the activities involved in their production require special equipment, specific chemicals, or a permit from a local jurisdiction. The new rules clarify the information needed by the Department before certain activities are approved, as well as the review process. They also require a

dispensary to maintain at the dispensary current and valid documentation of any certificate or permit issued by a local jurisdiction related to the operation of the dispensary or the dispensary's cultivation site. In addition, the new rules clarify that a hand washing sink not located in a toilet room has running water, soap contained in a dispenser, and either disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer, consistent with requirements for other sinks. In addition to minimal additional cost associated with the fee for applying for approval of certain activities, mentioned above, these clarifying changes could impose a minimal additional burden on a dispensary not already complying with them.

In the rulemaking, several changes were made to requirements related to the analytes for which testing is to be done that may provide up to a substantial benefit to a dispensary, depending on the volume of medical marijuana or marijuana products for which testing would need to be ordered. These include allowing a topical marijuana product that is intended to contain isopropanol to test positive for isopropanol, removing requirements for testing for propane or Acequinocyl, and clarifying what forms of abamectin, pyrethrins, and Spinosad are to be tested for. Since, according to R9-17-317.01(A)(2) and (3), not all marijuana or marijuana products must be tested by a laboratory for all analytes, the new rules clarify that the policies and procedures regarding the process for submitting a sample of medical marijuana or a marijuana product for testing must include specifying the analytes to be tested for consistent with R9-17-317.01. To protect the health and safety of qualifying patients and to make the rules consistent with industry standards, the new rules also lower the maximum level of *E. coli* contamination in edible marijuana or an edible marijuana product and the maximum level of mercury contamination in inhalable marijuana or an inhalable marijuana product, the latter to the current USP limit. The Department anticipates that these changes could cause up to a substantial increased cost to a dispensary that wanted to dispense marijuana or marijuana products that did not meet these new standards. However, the period of July to December 2022, only seven of approximately 1,900 samples of edible marijuana or an edible marijuana product tested positive for *E. coli* below 100 CFU/g but above 10 CFU/g. To help offset any increased burden these new standards may cause, the Department is also changing the rules to allow for simultaneous retesting of marijuana or a marijuana product, instead of requiring serial testing. In addition, the new rules specify a timeframe for laboratory testing, consistent with statutes, which may provide a significant benefit to a dispensary.

Over the past year or two, the Department has learned of a couple of instances in which the final report of testing from a laboratory has proven to be inaccurate and has addressed this issue in a previous rulemaking by allowing a dispensary to retest a batch of medical marijuana or a marijuana product using a second sample if the dispensary learns that the final report of testing may be inaccurate. In this rulemaking, the Department is clarifying that the information about an inaccurate test may also come from a marijuana establishment and is specifying that, if a dispensary learns of a

possible inaccurate final report of testing from another dispensary, the dispensary must notify the Department and include where the information was obtained. While this notification may cause a dispensary to incur a minimal additional cost due to the time spent notifying the Department, the benefit of the Department's knowing of the alleged inaccurate final report of testing so the situation can be investigated and the benefit of the dispensary being able to submit a second sample for testing far outweigh this potential cost.

- **Laboratories**

  There are currently 22 laboratories regulated under these rules, 20 operating laboratories and two with applications pending. These certified laboratories are listed in a Table at: https://www.azdhs.gov/documents/licensing/medical-marijuana/applications/mm-testing-labs-list.pdf?v=20230329. The Table specifies which analytes the laboratory may test for. According to the Table, 11 laboratories have approval to test for all the analytes specified in Table 3.1, while the others are only approved to test for a subset of the analytes. The first of these laboratories received approval to begin testing in September 2020.

  While statutory changes are the reason for some revisions being made in Article 4, many of the changes being made in the new rules are at the request of dispensaries or of owners of laboratories or laboratory directors. Others are to address issues identified by the Department; while still others reflect the maturing of the systems and new resources available to laboratories testing medical marijuana and marijuana products. In addition, some of the changes described above for dispensaries also affect laboratories, and related changes are being made in Article 4.

  There are several revisions being made to the rules on the basis of statutory changes that affect laboratories. References to testing for herbicides are being removed, consistent with the change in A.R.S. § 36-2803(E), and a timeline for completion of a final report of testing under different scenarios is added, consistent with A.R.S. § 36-2803(K). This includes the requirement for testing to be completed within 10 calendar days after receipt. Because of the addition of the statutes in A.R.S. Title 36, Chapter 28.2, and the advent of the adult-use marijuana program, the requirement in R9-17-411(C) for the Department to revoke a laboratory agent's registry identification card if the laboratory agent does not have a qualifying patient registry identification card and uses marijuana is being removed from the rules. Also in R9-17-411(C), the new rules add the exception provided in A.R.S. § 36-2804.01(D) for a laboratory agent who has been convicted of an excluded felony offense. Although these rule changes are due to statutory changes, rather than the rules themselves, the Department believes that the changes in R9-17-411 will provide a significant benefit to a laboratory by enabling the laboratory to better recruit and retain laboratory agents. However, the removal of herbicides as an analyte may cause as much as a substantial loss of revenue to a laboratory that had been testing for herbicides. Requiring a timeline for testing may also cause as much as a substantial

burden on a laboratory that has to hire additional staff, extend hours of testing, or buy additional instruments to enable the laboratory to meet the timelines.

In R9-17-402, the Department is clarifying that a laboratory will not begin testing marijuana pursuant to R9-17-317.01 until the laboratory has been inspected and issued an approval for testing by the Department. In this rule, the Department is also removing the requirement for policies and procedures to ensure that marijuana or marijuana products testing results are accurate, precise, and scientifically valid before reporting the results, and moving the requirement to the more appropriate location in R9-17-402.01. Consistent with statutes, the new rules now specify that a laboratory owner may not have a direct or indirect familial or financial relationship with or interest in a marijuana establishment. The Department is also substituting a sworn statement from the applicant related to zoning with a signed statement by a representative of a local jurisdiction related to compliance with local zoning restrictions. The Department believes that these changes could possibly cause a laboratory to incur a significant cost increase if the laboratory were not already following requirements in the Article and may provide a significant benefit to a laboratory related to when policies and procedures need to be completed and available.

In R9-17-404.07, the Department is adding to the application for adding or removing parameters for testing a requirement for an applicant to include whether the laboratory is ready for an inspection by the Department and, if not, when it will be. This will allow both the Department and a laboratory to better plan for an inspection of the laboratory, if one is needed, before the addition of a parameter is approved or denied. In R9-17-410, the Department is clarifying that the Department may deny an application for approval of a parameter for testing, submitted according to R9-17-402.01 or R9-17-404.07, if the applicant does not demonstrate compliance with the requirements of this Article related to the parameter or testing of an analyte. Similarly, the new rules clarify that the Department may revoke a laboratory's approval of a parameter for testing if the laboratory does not continue to demonstrate compliance with requirements related to the parameter or testing of an analyte. The Department estimates that the clarifications being made as part of this rulemaking may provide a significant benefit to a laboratory. If a laboratory did not understand and comply with any of the requirements being clarified, the Department believes that now understanding the requirements could cause a laboratory to incur up to substantial costs for complying with them.

Many of the rules in Article 4 are being changed to clarify existing technical requirements; they reflect good laboratory practices and how the rule has been enforced since testing began. For example, an initial demonstration of capability is used to show that the laboratory and laboratory agent are capable of performing testing with acceptable precision, accuracy, sensitivity, and specificity. It is required by good laboratory practice whenever there is a major change in how a test is performed. The new rules clarify that a major change in methodology includes not only a change in the method by

which the test is carried out, but also if there is a change in the instruments used as part of the methodology. For consistency, the rules are also clarifying that an initial demonstration of capability is also required for each parameter requested to be added, to be consistent with application requirements in R9-17-402.01. The Department believes that the clarifications may provide a significant benefit to a laboratory, but that a laboratory that was not following good laboratory practices could incur up to a substantial cost to come into compliance. Since the Department would likely discover the errant practices during an inspection, the clarification could reduce the time that the practices were occurring and benefit all affected parties.

The new rules also clarify that a sample of medical marijuana or a marijuana product that is accepted at a laboratory is analyzed with methods approved by the Department. Part of accepting medical marijuana and marijuana products for testing includes verifying the amount of each sample of medical marijuana or marijuana product accepted for testing. Standard operating procedures should include the recording of the dates and times of testing, including the date and time of each critical step, and the actual results of testing, including all raw data, work sheets, and calculations performed. These are clarified in the new rules. Since not every sample must be tested for every analyte, as specified in R9-17-317.01(A)(2) and (3), the testing record for marijuana or marijuana products should contain a description of the analytes to be tested for, as specified by the dispensary, laboratory, qualifying patient, or designated caregiver submitting the sample to the laboratory and a color picture of the sample. A unique sample identification is assigned as part of the process of accepting a sample for testing, according to R9-17-404.06(B)(1)(a), so a requirement for documenting a description of medical marijuana or marijuana product being disposed of and the name and registry identification number of the dispensary submitting the sample is being replaced in the new rules with a requirement for documenting the unique sample identification assigned to the sample of medical marijuana or a marijuana product to further clarify the unique sample. Also clarified is that part of disposing medical marijuana and marijuana products includes verifying that the amount of medical marijuana or marijuana product being disposed of is consistent with the original amount accepted for testing minus the amounts used for testing or transferred to another laboratory, to enhance inventory control requirements. The Department estimates that the clarifications may provide a significant benefit to a laboratory, but that a laboratory that was not following good laboratory practices related to these topics could incur up to a substantial cost to come into compliance.

The new rules further clarify that a laboratory agent may only transport marijuana or marijuana products submitted for testing to a laboratory having a registry identification number issued under this Chapter. Security-related requirements for vehicles that transport medical marijuana or marijuana products are being added, consistent with new statutory requirements. Other technical clarifications include the time-frame for having a certificate of meeting quality control standards for a batch of

media or reagent, that each lot of test kits or other identification systems undergoes quality control verification before use, that a testing batch may contain no more than 20 samples accepted for testing, and that a freezer storage area is maintained at or less than -20°C. The Department anticipates that the clarifications may provide a significant benefit to a laboratory.

Stakeholders have requested other changes that are being made in Article 4. These include that samples for initial verification of the limit of quantitation are spiked with all analytes. The new rules also clarify the acceptance criteria for testing for linear and non-linear calibration models; clarify requirements for each calibration event, including what may not be done as part of a calibration; specify requirements for new matrix types to be tested; clarify the requirements related to the resolution of chromatographic peaks for both testing by mass spectrometry methods and for testing by a method other than mass spectrometry; and clarify data qualifier notations related to recovery results from initial or continuing calibration verification standards. With respect to analyses for microbial contamination, the new rules add a cross-reference for reporting units for mycotoxin testing; add options for criteria for validation of methods; clarify requirements for methods for testing for *Escherichia coli*, *Salmonella*, and *Aspergillus*; and clarify the acceptance criteria for linear and non-linear calibration models for ELISA testing. The Department anticipates that these changes may provide up to a substantial benefit to a laboratory and cause a laboratory to incur no more than a minimal cost.

In response to stakeholder concerns, other requirements are being changed. Many reduce the burden on laboratories while not compromising the effectiveness of testing. The new rules simplify requirements for establishing a retention time window for each analyte, specify the requirements for the integration window when using a selective ion monitoring technique for data gathering, specify requirements for signal-to-noise ratios, simplify the requirements for the composition of calibration standards, and make the acceptance criteria for propane and butanes less stringent. In addition, the new rules add a reference for the specification of the signal-to-noise ratio of replicate samples, simplify the requirements for preparation of continuing calibration verification standards, and allows procedures for chain-of-custody documentation to be incorporated by reference in a quality assurance plan from separate documents. The requirements for the preparation of control samples used in batch testing are specified, and their acceptance criteria simplified. Requirements related to calibration and standards are simplified and made more flexible by specifying that the maximum allowable concentration in Table 3.1 for an analyte, with or without dilution, is less than the concentration of the highest calibration standard for the analyte. These changes may provide as much as a substantial benefit to a laboratory and cause a laboratory to incur no more than a minimal cost.

Still other changes are being made to address issues for dispensaries. Provisions for when a final report of testing needs to be changed, amended, or re-issued are being added. To make the final report

of testing more usable, the new rules clarify that a qualifier associated with an analysis for microbial contaminants, if applicable, is included on a final report of testing; specify that any qualifiers on a final report of testing are located adjacent to the name of the analyte or testing result to which the qualifier pertains; specify that a final report of testing include a color picture of the sample but not necessarily the amount; and add that the sample information on a final report of testing must include any changes made to the information recorded when the sample was received. The Department estimates that these changes may impose up to a moderate cost on laboratories.

To address issues identified by the Department as part of the implementation of laboratory testing for marijuana, the Department is making several changes to the rules. A requirement for a copy of current accreditation to be submitted as part of an application for approval for testing, rather than with an initial application for a certificate, is being added, as is that documentation of the initial demonstration of capability for each matrix is to be submitted as part of an application for approval for testing, including a cross-reference to a description of requirements. These changes may provide a significant benefit to a laboratory. The new rules specify that an initial demonstration of capability includes reference samples spiked into a clean matrix that is similar to the medical marijuana or marijuana product to be tested, with a mid-level standard, and that documentation of the current limit of quantitation is maintained for each analyte, matrix, and instrument. Requirements for specifying the limit of quantitation for each matrix are being clarified to include a cross-reference to a description of requirements. Policies and procedures need to specify that the portion of a sample transferred for further testing must be representative of the whole sample. The Department anticipates that a laboratory that was not already complying with these requirements as good laboratory practice may incur up to a substantial cost due to these changes.

Several changes are being made with respect to proficiency testing. A laboratory director is being required to ensure that a corrective action plan is submitted to the Department if the results of proficiency testing are not within acceptance limits. Furthermore, a laboratory director will be required to ensure that the laboratory does not test for an analyte for which the laboratory has failed proficiency testing twice in a row until the laboratory has demonstrated competency in testing for the analyte by repeat proficiency testing. It is believed that these changes, which protect health and safety, may cost a laboratory with poor performance as much as a substantial cost to come into compliance.

Since the testing of marijuana and marijuana products has begun, the resources available to laboratories have expanded, especially in the area of proficiency testing. When the rules in Article 4 were first adopted, there were many analyte/matrix combinations for which no proficiency testing samples were available. That is why the rules include the provisions for accuracy testing. New proficiency testing samples are now available, so the provisions for accuracy testing, in policies and procedures and other places, are being removed from the rules as no longer necessary. In addition, the

new rules clarify that a proficiency testing sample must be in a matrix similar to the medical marijuana or marijuana products accepted for testing. The Department anticipates that these changes may result in a minimal-to-moderate cost increase to a laboratory.

With respect to analyses for microbial contamination, the new rules add a requirement for enrichment of samples for testing for *Aspergillus* or *Salmonella* and a requirement for maintaining a log of samples for which *Aspergillus* or *Salmonella* are detected. If *Aspergillus* or *Salmonella* are detected, the new rules specify that retesting of these samples may only be done when quality control standards have failed or when recommended by the instrument manufacturer. To make requirements for testing for mycotoxins more flexible, the new rules add references to testing for mycotoxins through chemical analyses. The Department estimates that these changes may impose up to a moderate cost on a laboratory and may provide up to a moderate benefit.

As mentioned above for dispensaries, the new rules require that the policies and procedures of a dispensary regarding the process for submitting a sample of medical marijuana or a marijuana product for testing include specifying the analytes to be tested for, consistent with R9-17-317.01. The Department believes that this requirement may provide a significant benefit to a laboratory, in that the laboratory will know exactly what analytes the submitting dispensary wants tested. In conjunction with that change, the new rules also clarify that policies and procedures for laboratory records include that the analytes to be tested for be specified. While the removal of requirements for testing for propane or Acequinocyl may provide a benefit to dispensaries, their removal may cause up to a substantial decrease in revenue to a laboratory, since the prices a laboratory changes for testing may be reduced. Since the rules in R9-17-317.01 will now allow for simultaneous retesting by up to two independent laboratories, rather than sequential retesting, the new rules also specify that a portion of a sample for further testing may be the transferred at the request of a dispensary to no more than two other laboratories, independent of any lab that had previously tested the sample. This change may result in up to a minimal cost increase to a laboratory.

- **Registry identification cardholders**

Registry identification cardholders include qualifying patients, designated caregivers, dispensary agents, and laboratory agents. As of May 2023, there were 128,578 individuals with registry identification cards issued under these rules, as stated above. The vast majority of them (127,288) are qualifying patients. The changes in R9-17-104 and R9-17-105 of the new rules, adding the option of using a U.S. passport card instead of a passport when changing information on a registry identification card or requesting a replacement card, may provide a minimal benefit to all categories of these registry identification cardholders.

The new rules contain several changes that may benefit qualifying patients. The Department believes that lowering the maximum level of *E. coli* contamination in edible marijuana or an edible

marijuana product and the maximum level of mercury contamination in inhalable marijuana or an inhalable marijuana product, as specified in Table 3.1, may provide a significant benefit to qualifying patients in protecting their health and safety. Similarly, requiring that medical marijuana or a marijuana product provided by a dispensary to a qualifying patient or a designated caregiver is dispensed in a container made of material that will not react with or leach into the medical marijuana or marijuana product may also provide a significant benefit to the qualifying patient's health and safety. In the past few years the use of telemedicine for virtual medical appointments has grown tremendously. Recognizing this, the Department is removing the requirement that the physical examination required in R9-17-202 and R9-17-203 be in-person. The Department believes that this change may provide a further significant benefit to a qualifying patient.

A dispensary agent is expected to receive a benefit from other changes being made in the new rules. In R9-17-323, the Department is specifying that the Department may, rather than shall, deny a dispensary agent's application if the dispensary agent had previously had a registry identification card or marijuana facility agent license revoked, which may provide up to a substantial benefit to an affected dispensary agent. Clarifications, such as those related to hand-washing sinks and transport of marijuana or marijuana products, may also provide a significant benefit to a dispensary agent.

Laboratory agents are the registry identification cardholders most affected by the changes in the new rules. An individual has the option of using a U.S. passport card instead of a passport as part of an application for a laboratory agent card, as mentioned above. The new rules, in R9-17-405, also clarify that a laboratory agent is required to have an Arizona mailing address and that a laboratory agent is deemed to not have been convicted of an excluded felony offense through holding a valid level I fingerprint clearance card. In R9-17-406, the requirement for a laboratory agent to provide documentation of identity and lawful presence as part of a renewal application has been removed as unnecessary. The requirement for an owner to specify whether or not the laboratory agent currently holds a valid registry identification card and, if so, provide the assigned registry identification number has been removed from both rules, and the option for a laboratory agent to provide documentation of having a valid level I fingerprint clearance card, rather than submitting the laboratory agent's fingerprints for the required background check, has been added. The Department anticipates that these changes may provide a significant benefit to a laboratory agent. In R9-17-411, the requirement for the Department to revoke a laboratory agent's registry identification card if the laboratory agent does not have a qualifying patient registry identification card and uses marijuana has been removed due to the advent of the adult-use marijuana program. Also in that rule, the Department has added the exception provided in A.R.S. § 36-2804.01(D) for a laboratory agent who has been convicted of an excluded felony offense. The Department believes that this change may provide up to a substantial benefit to an affected laboratory agent.

- **Individuals with Post-traumatic Stress Disorder (PTSD))**

  The Department believes that adding Post-traumatic Stress Disorder (PTSD) for which an individual is receiving treatment to the list of debilitating medical conditions in R9-17-201 will clarify the rules and may provide a significant benefit to individuals with PTSD.

- **General public**

  The changes being made as part of this rulemaking are designed to reduce the regulatory burden while complying with statutes and protecting the health and safety of qualifying patients. In doing so, the Department anticipates that the rules may provide a significant benefit to the general public by improving the supply and quality of medical marijuana and marijuana products.

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

Public and private employment in the State of Arizona are not expected to be affected due to the changes in the rules.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rule may include dispensaries and laboratories.

b. The administrative and other costs required for compliance with the rules

The rules generally reduce administrative and other costs, subject to statutory requirements. Additional information is provided under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department has adopted many of the suggestions made by stakeholder to reduce the regulatory burden while preserving health and safety, as described under paragraph 3. The Department does not know of other methods to reduce the impact on small businesses while achieving the regulatory objective.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The probable costs and benefits to private persons and consumers are provided under paragraph 3.

6. A statement of the probable effect on state revenues

The Department does not anticipate that these changes will affect state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

The Department did not rely on any data except stakeholder comments and the Department's experience in regulating the entities under these rules in creating these rules. These first-hand experiences provide the best basis for determining what requirements are necessary to protect health and safety while not unduly burdening the regulated entities.

From: **Brandon Hamm** <brandon.hamm@haloinfusions.com>
Date: Mon, Jun 26, 2023 at 6:01 AM
Subject: R9-17 Draft Rules Comments
To: Megan Whitby <megan.whitby@azdhs.gov>, stacie.gravito@azdhs.gov <stacie.gravito@azdhs.gov>
Cc: Juanita Rountree <juanita.rountree@haloinfusions.com>, Murray Stein <Murray.stein@haloinfusions.com>

Good Morning Megan and Stacie,
My apologies for the comments coming in at the 11th hour, but we believe there are some items that need to be considered regarding the January Draft Rules. Please see references below:

R9-17-317.01 Analysis of Medical Marijuana or a Marijuana Product

We recently participated in a TA session with Jason Swank and team; we were informed that the ability to retest was contingent solely upon Table 3.1 Analytes, after inquiring about the path to retest for potency on edibles that "failed" to meet the criteria of +/- 20%.

We were told there isn't a path for retesting a product's potency, citing the absence of the language to 'Retest' under the column titled 'Required Action' under section E. POTENCY.

Given this logic, R9-17-317.01(C) is moot, because none of the analytes have a 'Retest' option under 'Required Actions'. The only available language in that column are:

- *Destroy*
- *Remediate and retest*
- *Revise label as necessary*
- *Remediate and use for preparing an extract or a concentrate*

The language in Table 3.1, under the column titled 'Required Action' needs to be updated to reflect a path to 'Retest' for all analytes, as described in 317.01 (C), where reasonable.
NOTE: Potency is a reasonable analyte for retest given the lack of methodology standardization, and the degree of variability, between labs; we have data to support this.

In the same TA Session, we requested guidance on how to interpret Table 3.1 Analytes, Section E. Potency, that gives the statement that if a product's *'Label claim is not within +/- 20 % of tested value'* that product's label must be revised, given the difference of interpretation in the market at different dispensaries.

We stated that as an algorithm formed from a word problem, this reads:

- Label Claim ≠ CoA Value X (.80 or 1.20); must be relabeled as necessary

Clearly there was an inconsistency in how the language reads, because it was 3 weeks before we received a response to that particular question; the response (attached as an image below) was not consistent with the language in Table 3.1.

The language in Table 3.1, needs to be updated to reflect +/- 20% of Label Claim rather than +/- 20% of the CoA Value. This would prevent further confusion in the field.

R9-17-318(D)(i-iii) Security

There are very real challenges to finding a camera and monitoring system that meets the criteria in this section; we have spoken with or had demos from 8 providers thus far. Please see our findings below:

- The most robust fleet solutions require a minimum of 10 vehicles.
- Few offer a third auxiliary camera solution for cargo holds.
- None offer storage solutions large enough for storage the way building security does with large external hard drives networked into the security system.
- Cloud storage will not hold more than a few days (60-65 hours) of footage, because video consumes a considerable amount of storage, much-less 30 days.
    - Only hyperlapse videos are able to meet the criteria in our experience looking for a solution.
    - Only 'events' are backlogged in the cloud for more than 30-60 days in most systems.
    - Cloud storage storage will be overwritten (FIFO) once the capacity is reached.
    - Lacking the ability to pull full videos for download, we would only be able to pull portions (1 minute increments) at a time.
    - No integrations to add more cloud storage. Capped at what is offered by the service.
    - Cloud services will only maintain up to 60GB in cloud
- Physical storage (SD cards) will not hold more than a few days of footage; the exercise of rotating SD cards is not a sustainable solution.
    - Requires physical management of hardware and videos and risks a greater chance of loss or file corruption.
    - Cameras have limits to the size of the memory that can be loaded (128gb). 1 hour of HD video is approx 2GB with 2 to 3 cameras that become up to 6 GB an hour. For a 6 hour trip with 3 cameras that can be upwards of 36GB of memory.
    - Will only hold hours of HD video before it overwrites (FIFO)without warning.
    - Some leaders in the telematics industry do not even offer this feature- Samsara, Motive, etc.

- Cameras will only stay on if the vehicle is on; suggesting we must leave vehicles running to meet the criteria of recording the "entirety" of the trip.
- “Rugged” or “high temperature dash cams” are rated to 158F. Temperatures in the Arizona area up to 120F with the dash getting much hotter sitting in the sun in closed, secure vehicles.

We would like to recommend further discussion to adjust the language in this subsection, due to the challenges described above, before implementation.

Thank you for taking the time to consider these points. We are glad to meet with the department to explain further if ever called-upon to do so.

Kind Regards,

Brandon Hamm
Infrastructure Manager
Halo Infusions
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(520) 349-9755

Good afternoon,

The potency calculation shown at the technical assistance meeting held on May 23, 2023, is the method all Compliance Officers use when determining the 20% variance. The Bureau of Marijuana Licensing received that calculation/guidance from the Office of Laboratory Licensure & Certification. I've included the screenshots below for reference.

How to Calculate Percent Variance

1) Divide the Label Claim by the COA result.

$$\frac{19.34}{16.63} = 1.16$$

NOTE: It is important that the label claim and COA are divided in this order!!

2) Multiply the result by 100

$$1.16 * 100 = 116\%$$

3) If the result is between 80 and 120%, the label claim is in compliance ✓

How to Calculate the Label Claim %THC or mg/g when Label is in mg/piece

1) Determine the weight of each piece by dividing the net weight by the number of pieces.

$$\frac{\mathbf{64\ g}}{\mathbf{20\ pieces}} = \mathbf{3.2\ g\ per\ piece}$$

2) Divide the label claim per piece by the weight of each piece.

$$\frac{\mathbf{2.5\ mg\ THC}}{\mathbf{3.2\ g}} = \mathbf{0.78125\ mg/g\ THC\ or\ 0.078125\%}$$

Now simply calculate the percent variance the same as the previous example.

$$\frac{\mathbf{0.078125}}{\mathbf{0.08357}} * \mathbf{100} = \mathbf{93.5\%}$$ ✓ Between 80 and 120%

Thank you,

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

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:

Department: Department of Health Services
Address: Public Health Licensing Services
150 N. 18th Ave., Suite 400
Phoenix, AZ 85007
Website: https://www.azdhs.gov
Name: Megan Whitby, Bureau Chief
Telephone: (602) 364-3052
Fax: (602) 364-2079
Email: Megan.Whitby@azdhs.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.

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 *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.

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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 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

Authority: A.R.S. §§ 36-136(G), 36-2803 and 36-2854

Editor's Note: Under A.R.S. 41-1011(C) Table 3.1 referenced in this Chapter now includes the table name Analytes for clarity. This change did not alter the sense, meaning or effect of any rule in this Chapter (Supp. 21-2).

Editor's Note: To assist with compliance of exempt rules filed and effective January 15, 2021, the Administrative Rules Division has expedited the publication of this Chapter and released it in Supp. 20-4. Multiple notice filings were received with amendments to the same Sections in this supplement release. For versioning of these Sections, refer to the published notice in the Arizona Administrative Register (Supp. 20-4).

Editor's Note: Section R9-17-102 and its historical note were inadvertently removed in Supp. 20-2; the Section and historical note have been restored as last amended in Supp. 19-3 (Supp. 20-3).

Editor's Note: This Chapter was adopted under a one-year exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Proposition 203 passed by the voters in November 2010. Although exempt from certain provisions of the rulemaking process, Section 6 of the Proposition required the Department to provide the public with an opportunity to comment on these rules before publishing the exempted rules. The Department posted proposed rules for comment on its web site, conducted statewide public meetings and also posted public comments received on its web site. (Supp. 11-2).

Editor's Note: 9 A.A.C. 17, formerly contained the rules of the Department of Health Services - Pure Food Control. This Chapter expired under A.R.S. § 41-1056(E) at 13 A.A.R. 3531, effective August 31, 2007 (Supp. 07-3).

ARTICLE 1. GENERAL

Article 1, consisting of Sections R9-17-101 through R9-17-109, made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

Section

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

Article 2, consisting of Sections R9-17-201 through R9-17-205, made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

Section

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

Article 3, consisting of Sections R9-17-301 through R9-17-323, made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

Section

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

Article 4, consisting of Sections R9-17-401 through R9-17-411, made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

ARTICLE 1. GENERAL

R9-17-101. Definitions

In addition to the definitions in A.R.S. § 36-2801, the following definitions apply in this Chapter unless otherwise stated:

1. "Accreditation" means being deemed as technically competent under ISO 17025 by the:
   a. American Association of Laboratory Accreditation,
   b. Perry Johnson Laboratory Accreditation,
   c. ANSI National Accreditation Board, or
   d. International Accreditation Services.
2. "Accuracy testing" means a mechanism in which a laboratory performs testing on samples with known characteristics, prepared by the laboratory, to determine a laboratory agent's ability to analyze samples within specific acceptance criteria.
3. "Acquire" means to obtain through any type of transaction and from any source.
4. "Activities of daily living" means ambulating, bathing, dressing, grooming, eating, toileting, and getting in and out of bed.
5. "Amend" means adding or deleting information on an individual's registry identification card that affects the individual's ability to perform or delegate a specific act or function.
6. "Analyte" means a specific substance for which testing is performed by a laboratory.
7. "Applicant" means:
   a. An individual submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent;
   b. An entity submitting an application for a dispensary registration certificate or approval to operate a dispensary; or
   c. An individual or entity submitting an application for a laboratory registration certificate, approval to test, or approval to change parameters.
8. "Batch" means:
   a. When referring to cultivated medical marijuana, a specific lot of medical marijuana grown from one or more seeds or cuttings that are planted and harvested at the same time;
   b. When referring to marijuana products, a specific amount of a marijuana product infused, manufactured, or prepared for sale from the same set of ingredients at the same time; and
   c. When referring to testing of medical marijuana or a marijuana product, a specific set of samples prepared and tested during the same run using the same equipment.
9. "Batch number" means a unique numeric or alphanumeric identifier assigned to a batch by a dispensary when:
   a. The batch of medical marijuana is planted, or
   b. The batch of a marijuana product is infused, manufactured, or prepared for sale.
10. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
11. "Change" means:
    a. When used in relation to a registry identification card, adding or deleting information on an individual's registry identification card that does not substantively affect the individual's ability to perform or delegate a specific act or function;
    b. When used in relation to a place, moving to a different location;
    c. When used in relation to an individual, selecting a different individual to perform specific actions;
    d. When used in relation to parameters, revising a laboratory's standard operating procedures or quality assurance plan, required in R9-17-404.06, due to:
       i. Adding or removing a parameter,
       ii. Altering a testing method, or
       iii. Using a different instrument for performing a test; and
    e. When used in relation to testing results, altering the testing results in any way and for any reason.
12. "Commercial device" means the same as in A.R.S. § 3-3451.
13. "Contaminant" means matter, pollutant, hazardous substance, or other substance that is not intended to be part of dispensed medical marijuana or a marijuana product.
14. "Cultivation site" means the one additional location where marijuana may be cultivated, infused, or prepared for sale by and for a dispensary.
15. "Current photograph" means an image of an individual, taken no more than 60 calendar days before the submission of the individual's application, in a Department-approved electronic format capable of producing an image that:
    a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
    b. Is 2 inches by 2 inches in size;
    c. Is in natural color;
    d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;
    e. Has a plain white or off-white background; and
    f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
16. "Denial" means the Department's final decision not to issue a registry identification card, a dispensary registration certificate, a laboratory registration certificate, or an approval of a change of dispensary or a dispensary's cultivation site location, to an applicant because the applicant or the application does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
17. "Dispensary" means the same as "nonprofit medical marijuana dispensary" as defined in A.R.S. § 36-2801.
18. "Dispensary agent" means the same as "nonprofit medical marijuana dispensary agent" as defined in A.R.S. § 36-2801.
19. "Dual licensee" means the same as in A.R.S. § 36-2850.
20. "Edible food product" means a substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human oral consumption.
21. "Enclosed area" when used in conjunction with "enclosed, locked facility" means outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate.
22. "Entity" means the same as in A.R.S. § 29-2102.
23. "Generally accepted accounting principles" means the set of financial reporting standards established by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or another specialized body dealing with accounting and auditing matters.
24. "Geographic area" means the same as in A.R.S. § 36-2803.01.
25. "In-state financial institution" means the same as in A.R.S. § 6-101.

26. "Inhalable" means intended for use through intake into the lungs of an individual.
27. "Laboratory" means the same as "independent third-party laboratory" as defined in A.R.S. § 36-2801.
28. "Laboratory agent" means the same as "independent third-party laboratory agent" as defined in A.R.S. § 36-2801.
29. "Legal guardian" means an adult who is responsible for a minor:
    a. Through acceptance of guardianship of the minor through a testamentary appointment or an appointment by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2; or
    b. As a "custodian" as defined in A.R.S. § 8-201.
30. "Marijuana establishment" means the same as in A.R.S. § 36-2850.
31. "Marijuana facility agent" means the same as in A.R.S. § 36-2850.
32. "Medical record" means the same as:
    a. "Adequate records" as defined in A.R.S. § 32-1401,
    b. "Adequate medical records" as defined in A.R.S. § 32-1501,
    c. "Adequate records" as defined in A.R.S. § 32-1800, or
    d. "Adequate records" as defined in A.R.S. § 32-2901.
33. "Out-of-state financial institution" means the same as in A.R.S. § 6-101.
34. "Parameter" means the combination of a particular type of sample with a specific instrument or equipment by which the sample will be tested for a specific analyte or characteristic.
35. "Proficiency testing" means a mechanism in which samples with known characteristics are submitted to a laboratory for analysis to determine a laboratory agent's ability to analyze samples within specific acceptance criteria.
36. "Proficiency testing service" means an independent company or other person acceptable to the Department, based on ISO/IEC 17043:2010 certification, that:
    a. Is the source for samples with known characteristics for proficiency testing, and
    b. Assesses the acceptability of a laboratory agent's results from the samples with known characteristics during proficiency testing.
37. "Private school" means the same as in A.R.S. § 15-101.
38. "Public school" means the same as "school" as defined in A.R.S. § 15-101.
39. "Registry identification number" means the random 20-digit alphanumeric identifier generated by the Department, containing at least four numbers and four letters, issued by the Department to a qualifying patient, designated caregiver, dispensary, dispensary agent, laboratory, or laboratory agent.
40. "Revocation" means the Department's final decision that an individual's registry identification card, a dispensary registration certificate, or a laboratory registration certificate is rescinded because the individual, the dispensary, or the laboratory does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
41. "Sample" means:
    a. A representative portion of a larger quantity of medical marijuana or a marijuana product,
    b. A specific quantity of a substance or set of substances to be used for testing purposes, or
    c. To collect the representative portion in subsection (41)(a).
42. "Time/temperature control for safety food" means the same as in the Food Code: 2017 Recommendations of the United States Public Health Service, Food and Drug Administration, § 1-201.10.
43. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Subsection reference to (39)(a) in subsection (41)(c) corrected to (41)(a); Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022; (Supp. 22-3).

R9-17-102. Fees

A. An applicant submitting an application to the Department shall submit the following nonrefundable fees:
1. For registration of a dispensary, $4,000;
2. To renew the registration of a dispensary, $1,000;
3. To change the location of a dispensary, $2,500;
4. To change the location of a dispensary's cultivation site or add a cultivation site, $2,500;
5. For a registry identification card for a:
    a. Qualifying patient, except as provided in subsection (B), $150;
    b. Designated caregiver, $200;
    c. Dispensary agent, $500; and
    d. Laboratory agent, $500;
6. For renewing a registry identification card for a:
    a. Qualifying patient, except as provided in subsection (B), $150;
    b. Designated caregiver, $200;
    c. Dispensary agent, $500; and
    d. Laboratory agent, $500;
7. For amending or changing a registry identification card, $10;
8. For requesting a replacement registry identification card, $10;
9. For registration of a laboratory, $5,000; and
10. To renew the registration of a laboratory, $1,000.

B. A qualifying patient may pay a reduced fee of $75 if the qualifying patient submits, with the qualifying patient's application for a registry identification card or the qualifying patient's application to renew the qualifying patient's registry identification card, a copy of an eligibility notice or electronic benefits transfer card demonstrating current participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R.

2421, effective August 27, 2019 (Supp. 19-3). Section R9-17-102 and its historical note were inadvertently removed in Supp. 20-2; the Section and historical note have been restored as last amended in Supp. 19-3 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-103. Repealed

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Repealed by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-104. Changing Information on a Registry Identification Card

Except as provided in R9-17-203(B) and (C), to make a change to a cardholder's name or address on the cardholder's registry identification card, the cardholder shall submit to the Department, within 10 working days after the change, a request for the change that includes:

1. The cardholder's name and the registry identification number on the cardholder's current registry identification card;
2. The cardholder's new name or address, as applicable;
3. For a change in the cardholder's name, one of the following with the cardholder's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the cardholder's U.S. passport;
4. For a change in address, the county where the new address is located;
5. The effective date of the cardholder's new name or address; and
6. The applicable fee in R9-17-102 for changing a registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-105. Requesting a Replacement Registry Identification Card

To request a replacement card for a cardholder's registry identification card that has been lost, stolen, or destroyed, the cardholder shall submit to the Department, within 10 working days after the cardholder's registry identification card was lost, stolen, or destroyed, a request for a replacement card that includes:

1. The cardholder's name and date of birth;
2. If known, the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card;
3. If the cardholder cannot provide the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card, a copy of one of the following documents that the cardholder submitted when the cardholder obtained the registry identification card:
   a. Arizona driver's license,
   b. Arizona identification card,
   c. Arizona registry identification card, or
   d. Photograph page in the cardholder's U.S. passport; and
4. The applicable fee in R9-17-102 for requesting a replacement registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-106. Adding a Debilitating Medical Condition

A. An entity may request the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 by submitting to the Department, at the times specified in subsection (C), the following in writing:

1. The entity's name;
2. The entity's mailing address, name of contact individual, telephone number, and, if applicable, e-mail address;
3. The name of the medical condition the entity is requesting be added;
4. A description of the symptoms and other physiological effects experienced by an individual suffering from the medical condition or a treatment of the medical condition that may impair the ability of the individual to accomplish activities of daily living;
5. The availability of conventional medical treatments to provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition;
6. A summary of the evidence that the use of marijuana will provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition; and
7. Articles, published in peer-reviewed scientific journals, reporting the results of research on the effects of marijuana on the medical condition or a treatment of the medical condition supporting why the medical condition should be added.

B. The Department shall:

1. Acknowledge in writing the Department's receipt of a request for the addition of a medical condition to the list of debilitating medical conditions listed in R9-17-201 within 30 calendar days after receiving the request;
2. Review the request to determine if the requester has provided evidence that:
   a. The specified medical condition or treatment of the medical condition impairs the ability of the individual to accomplish activities of daily living, and
   b. Marijuana usage provides a therapeutic or palliative benefit to an individual suffering from the medical condition or treatment of the medical condition;
3. Within 90 calendar days after receiving the request, notify the requester that the Department has determined that the information provided by the requester:
   a. Meets the requirements in subsection (B)(2) and the date the Department will conduct a public hearing to discuss the request; or
   b. Does not meet the requirements in subsection (B)(2), the specific reason for the determination, and the process for requesting judicial review of the Department's determination pursuant to A.R.S. Title 12, Chapter 7, Article 6;
4. If applicable:
   a. Schedule a public hearing to discuss the request;
   b. Provide public notice of the public hearing by submitting a Notice of Public Information to the Office of the Secretary of State, for publication in the *Arizona Administrative Register* at least 30 calendar days before the date of the public hearing;

c. Post a copy of the request on the Department's web site for public comment at least 30 calendar days before the date of the public hearing; and
d. Hold the public hearing no more than 150 calendar days after receiving the request; and

5. Within 180 calendar days after receiving the request:
   a. Add the medical condition to the list of debilitating medical conditions, or
   b. Provide written notice to the requester of the Department's decision to deny the request that includes:
      i. The specific reasons for the Department's decision; and
      ii. The process for requesting judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

C. The Department shall accept requests for the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 in January and July of each calendar year starting in January 2012.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-107. Time-frames

A. Within the administrative completeness review time-frame for each type of approval in Table 1.1, the Department shall:
1. Issue a registry identification card, a dispensary registration certificate, an approval to operate a dispensary, a laboratory registration certificate, an approval for testing, or an approval to add a parameter;
2. Provide a notice of administrative completeness to an applicant; or
3. Provide a notice of deficiencies to an applicant, including a list of the information or documents needed to complete the application.

B. An application for approval to operate a dispensary is not complete until the date the applicant states on a written notice provided to the Department according to R9-17-305 that the dispensary is ready for an inspection by the Department.

C. A laboratory's application for approval for testing is not complete until the date the applicant states on a written notice provided to the Department according to R9-17-402.01 that the laboratory is ready for an inspection by the Department.

D. If the Department provides a notice of deficiencies to an applicant:
1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant; and
2. The Department shall consider the application withdrawn if the applicant does not submit the missing information or documents to the Department within the time-frame in Table 1.1.

E. Within the substantive review time-frame for each type of approval in Table 1.1, the Department:
1. According to subsection (H), shall issue or deny:
   a. A registry identification card, dispensary registration certificate, or laboratory registration certificate; or
   b. Approval to operate a dispensary, approval for testing, or approval to add a parameter;
2. May complete an inspection that may require more than one visit to a dispensary and, if applicable, the dispensary's cultivation site;
3. May complete an inspection that may require more than one visit to a laboratory; and
4. May make one written comprehensive request for more information, unless the Department and the applicant agree in writing to allow the Department to submit supplemental requests for information.

F. If the Department issues a written comprehensive request or a supplemental request for information:
1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives all of the information requested, and
2. The applicant shall submit to the Department all of the information and documents listed in the written comprehensive request or supplemental request for information within the time-frame in Table 1.1.

G. If an applicant for an initial dispensary registration certificate is allocated a dispensary registration certificate as provided in R9-17-303, the Department shall provide a written notice to the applicant of the allocation of the dispensary registration certificate and issue the dispensary registration certificate.

H. If an application for an initial laboratory registration certificate is approved, the Department shall review the information and documents submitted according to R9-17-402(A)(4) and:
1. If the information and documents for at least one of the owners comply with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
   a. A laboratory agent registry identification card to any owner who complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
   b. The laboratory registration certificate; and
2. If the information and documents submitted according to R9-17-402(A)(4) for an owner do not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the owner a laboratory agent registry identification card and provide notice to the owner and to the laboratory that includes:
   a. The specific reasons for the denial; and
   b. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

I. The Department shall issue:
1. A registry identification card, renewal of a dispensary registration certificate, an approval to operate a dispensary, renewal of a laboratory registration certificate, an approval for testing, or an approval to add a parameter, as applicable, if the Department determines that the applicant complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
2. For an applicant for a registry identification card, a denial that includes the reason for the denial and the process for requesting judicial review if:
   a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter; or
   b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information;
3. For an applicant for an initial dispensary registration certificate, if the Department determines that the dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter:
   a. A dispensary registration certificate, if not all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; or
   b. Written notice that:
      i. The dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
      ii. The applicant was not allocated a dispensary registration certificate according to the criteria and processes in R9-17-303 because all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; and

iii. The written notice is not a denial and is not considered a final decision of the Department subject to administrative review; or

4. For an applicant for a dispensary registration certificate, an approval to operate, a laboratory registration certificate, an approval for testing, or an approval to add a parameter, a denial that includes the reason for the denial and the process for administrative review if:
   a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
   b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

Table 1.1 Time-frames

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for applicant to complete application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)	Response Time for Request in R9-17-107(F)(2) (in working days)
Changing a registry identification card	§ 36-2808	10	10	5	5	10
Requesting a replacement registry identification card	§ 36-2804.06	5	5	2	3	10
Applying for a registry identification card for a qualifying patient or a designated caregiver	§ 36-2804.02(A)	15	30	5	10	10
Amending a registry identification card for a qualifying patient or a designated caregiver	§ 36-2808	10	30	5	5	10
Renewing a qualifying patient's or designated caregiver's registry identification card	§§ 36-2804.02(A) and 36-2804.06	15	30	5	10	10
Applying for a dispensary registration certificate	§ 36-2804	30	10	5	25	10
Applying for approval to operate a dispensary	R9-17-305	45	90	15	30	60
Changing a dispensary registration certificate	§ 36-2804 and R9-17-307	90	90	30	60	60
Renewing a dispensary registration certificate	§ 36-2804.06	15	30	5	10	10
Applying for a dispensary agent registry identification card	§§ 36-2804.01 and 36-2804.03	15	30	5	10	10
Renewing a dispensary agent's registry identification card	§ 36-2804.06	15	30	5	10	10
Applying for a laboratory registration certificate	§ 36-2804.07	90	90	30	60	60
Applying for approval for testing	R9-17-402.01	90	90	30	60	60

Renewing a laboratory registration certificate	§ 36-2804.06	15	30	5	10	10
Applying to add a parameter	R9-17-404.07	90	90	30	60	60
Applying for a laboratory agent registry identification card	§ 36-2804.01	15	30	5	10	10
Renewing a laboratory agent's registry identification card	§ 36-2804.06	15	30	5	10	10

Historical Note

New Table 1.1 made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Table 1.1 amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired; Table 1.1 amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Section symbols added to A.R.S. citations (Supp. 17-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-108. Expiration of a Registry Identification Card, Dispensary Registration Certificate, or Laboratory Registration Certificate

A. Except as provided in subsection (B), a registry identification card issued to a qualifying patient, designated caregiver, dispensary agent, or laboratory agent is valid for two years after the date of issuance.

B. If the Department issues a registry identification card to a qualifying patient, designated caregiver, dispensary agent, or laboratory agent based on a request for a replacement registry identification card or an application to change or amend a registry identification card, the replacement, changed, or amended registry identification card shall have the same expiration date as the registry identification card being replaced, changed, or amended.

C. Except as provided in subsection (D), a dispensary registration certificate is valid for two years after the date of issuance.

D. If the Department issues an amended dispensary registration certificate based on a change of location or an addition of a cultivation site, the dispensary registration certificate shall have the same expiration date as the dispensary registration certificate previously held by the dispensary.

E. An approval to operate a dispensary shall have the same expiration date as the dispensary registration certificate associated with the approval to operate the dispensary.

F. A laboratory registration certificate is valid for two years after the original date of issuance.

G. A laboratory's approval for testing shall have the same expiration date as the laboratory registration certificate associated with the laboratory's approval to test.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-109. Notifications and Void Registry Identification Cards

A. The Department shall provide written notice that a cardholder's registry identification card is void and no longer valid under A.R.S. Title 36, Chapter 28.1 and this Chapter to a:

1. Qualifying patient when the Department receives notification from:
   a. The qualifying patient that the qualifying patient no longer has a debilitating medical condition, or
   b. The physician who provided the qualifying patient's written certification that the:
      i. Qualifying patient no longer has a debilitating medical condition,
      ii. Physician no longer believes that the qualifying patient would receive therapeutic or palliative benefit from the medical use of marijuana, or
      iii. Physician believes that the qualifying patient is not using the medical marijuana as recommended;
2. Designated caregiver when:
   a. The Department receives notification from the designated caregiver's qualifying patient that the designated caregiver no longer assists the qualifying patient with the medical use of marijuana, or
   b. The registry identification card for the qualifying patient that is listed on the designated caregiver's registry identification card is no longer valid;
3. Dispensary agent when:
   a. The Department receives the written notification, required in R9-17-310(A)(9), that the dispensary agent:
      i. No longer serves as a principal officer, board member, or medical director for the dispensary;
      ii. Is no longer employed by the dispensary; or
      iii. No longer provides volunteer service at or on behalf of the dispensary; or
   b. The registration certificate for the dispensary that is listed on the dispensary agent's registry identification card is no longer valid; or
4. Laboratory agent when:
   a. The Department receives the written notification, required in R9-17-404(10), that the laboratory agent no longer:
      i. Serves as an owner for the laboratory,
      ii. Is employed by the laboratory, or
      iii. Provides volunteer service at or on behalf of the laboratory; or

b. The registration certificate for the laboratory that is listed on the laboratory agent's registration identification card is no longer valid.

B. The Department shall void a qualifying patient's registry identification card:
1. When the Department receives notification that the qualifying patient is deceased; or
2. For a qualifying patient under 18 years of age, when the qualifying patient's designated caregiver's registry identification card is revoked.

C. The written notice required in subsection (A) that a registry identification card is void is not a revocation and is not considered a final decision of the Department subject to judicial review.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

R9-17-201. Debilitating Medical Conditions

An individual applying for a qualifying patient registry identification card shall have a diagnosis from a physician of at least one of the following debilitating medical conditions:

1. Cancer;
2. Glaucoma;
3. Human immunodeficiency virus;
4. Acquired immune deficiency syndrome;
5. Hepatitis C;
6. Amyotrophic lateral sclerosis;
7. Crohn's disease;
8. Agitation of Alzheimer's disease;
9. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces cachexia or wasting syndrome;
10. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe and chronic pain;
11. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe nausea;
12. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces seizures, including those characteristic of epilepsy;
13. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe or persistent muscle spasms, including those characteristic of multiple sclerosis; or
14. A debilitating medical condition approved by the Department under A.R.S. § 36-2801.01 and R9-17-106.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver

A. Except for a qualifying patient who is under 18 years of age, a qualifying patient is not required to have a designated caregiver.

B. A qualifying patient may have only one designated caregiver at any given time.

C. Except for a qualifying patient who is under 18 years of age, if the information submitted for a qualifying patient complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the information for the qualifying patient's designated caregiver does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue the registry identification card for the qualifying patient separate from issuing a registry identification card for the qualifying patient's designated caregiver.

D. If the Department issues a registry identification card to a qualifying patient under subsection (C), the Department shall continue the process for issuing or denying the qualifying patient's designated caregiver's registry identification card.

E. The Department shall not issue a designated caregiver's registry identification card before the Department issues the designated caregiver's qualifying patient's registry identification card.

F. Except as provided in subsection (G), to apply for a registry identification card, a qualifying patient shall submit to the Department the following:
1. An application in a Department-provided format that includes:
   a. The qualifying patient's:
      i. First name; middle initial, if applicable; last name; and suffix, if applicable;
      ii. Date of birth; and
      iii. Gender;
   b. Except as provided in subsection (F)(1)(i), the qualifying patient's Arizona residence address and Arizona mailing address;
   c. The county where the qualifying patient resides;
   d. The qualifying patient's e-mail address;
   e. The identifying number on the applicable card or document in subsection (F)(2)(a) through (e);
   f. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
   g. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
   h. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
   i. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
   j. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
   k. An attestation that the information provided in the application is true and correct; and
   l. The signature of the qualifying patient and date the qualifying patient signed;
2. A copy of the qualifying patient's:
   a. Arizona driver's license issued on or after October 1, 1996;

b. Arizona identification card issued on or after October 1, 1996;
c. Arizona registry identification card;
d. Photograph page in the qualifying patient's U.S. passport or a U.S. passport card; or
e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient:
   i. Birth certificate verifying U.S. citizenship,
   ii. U.S. Certificate of Naturalization, or
   iii. U.S. Certificate of Citizenship;

3. A current photograph of the qualifying patient;
4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
   a. The physician's:
      i. Name,
      ii. License number including an identification of the physician license type,
      iii. Office address on file with the physician's licensing board,
      iv. Telephone number on file with the physician's licensing board, and
      v. E-mail address;
   b. The qualifying patient's name and date of birth;
   c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
   d. An identification, initialed by the physician, of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
   e. If the debilitating medical condition identified in subsection (F)(5)(d) is a condition in:
      i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
      ii. R9-17-201(14), the debilitating medical condition;
   f. A statement, initialed by the physician, that the physician:
      i. Has established a medical record for the qualifying patient, and
      ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
   g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
   h. The date the physician conducted the in-person physical examination of the qualifying patient;
   i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
      i. Medical records including medical records from other treating physicians from the previous 12 months,
      ii. Response to conventional medications and medical therapies, and
      iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
   k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
   l. A statement, initialed by the physician, that, if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
   m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:
      i. The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
      ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
   n. An attestation that the information provided in the written certification is true and correct; and
   o. The physician's signature and the date the physician signed;
6. If the qualifying patient is designating a caregiver, the following in a Department-provided format:
   a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The designated caregiver's date of birth;
   c. The designated caregiver's Arizona residence address and Arizona mailing address;
   d. The county where the designated caregiver resides;
   e. The identifying number on the applicable card or document in subsection (F)(6)(h)(i) through (v);
   f. An attestation signed and dated by the designated caregiver that the designated caregiver:
      i. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
      ii. Is deemed to not have been convicted of an excluded felony offence through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;
   g. A statement signed by the designated caregiver:
      i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
      ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
   h. A copy of the designated caregiver's:
      i. Arizona driver's license issued on or after October 1, 1996;
      ii. Arizona identification card issued on or after October 1, 1996;
      iii. Arizona registry identification card;
      iv. Photograph page in the designated caregiver's U.S. passport or a U.S. passport card; or
      v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
         (1) Birth certificate verifying U.S. citizenship,
         (2) U.S. Certificate of Naturalization, or

(3) U.S. Certificate of Citizenship;

i. A current photograph of the designated caregiver; and

j. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:

i. The designated caregiver's fingerprints on a fingerprint card that includes:

(1) The designated caregiver's first name; middle initial, if applicable; and last name;
(2) The designated caregiver's signature;
(3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
(4) The designated caregiver's address;
(5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
(6) The designated caregiver's date of birth;
(7) The designated caregiver's Social Security number;
(8) The designated caregiver's citizenship status;
(9) The designated caregiver's gender;
(10) The designated caregiver's race;
(11) The designated caregiver's height;
(12) The designated caregiver's weight;
(13) The designated caregiver's hair color;
(14) The designated caregiver's eye color; and
(15) The designated caregiver's place of birth;

ii. If the designated caregiver's fingerprints and information required in subsection (F)(6)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; or

iii. Documentation that the designated caregiver has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

7. The applicable fees in R9-17-102 for applying for:
   a. A qualifying patient registry identification card; and
   b. If applicable, a designated caregiver registry identification card.

G. To apply for a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's:
      i. First name; middle initial, if applicable; last name; and suffix, if applicable;
      ii. Date of birth; and
      iii. Gender;
   b. The qualifying patient's Arizona residence address and Arizona mailing address;
   c. The county where the qualifying patient resides;
   d. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
   e. The identifying number on the applicable card or document in subsection (G)(5)(a) through (e);
   f. The qualifying patient's custodial parent's or legal guardian's Arizona residence address and Arizona mailing address;
   g. The county where the qualifying patient's custodial parent or legal guardian resides;
   h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
   i. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;
   j. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the patient's medical record, maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;
   k. The qualifying patient's custodial parent's or legal guardian's date of birth;
   l. Whether the qualifying patient's custodial parent or legal guardian is requesting authorization for cultivating medical marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
   m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
   n. Whether the individual submitting the application on behalf of the qualifying patient under 18 years of age is the qualifying patient's custodial parent or legal guardian;
   o. An attestation that the information provided in the application is true and correct; and
   p. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;
2. A current photograph of the:
   a. Qualifying patient, and
   b. Qualifying patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver;
3. An attestation in a Department-provided format signed and dated by the qualifying patient's custodial parent or legal guardian that the qualifying patient's custodial parent or legal guardian:
   a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
   b. Is deemed to not have been convicted of an excluded felony offence through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;
4. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
   a. Allowing the qualifying patient's medical use of marijuana;
   b. Agreeing to assist the qualifying patient with the medical use of marijuana; and
   c. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

5. A copy of one of the following for the qualifying patient's custodial parent or legal guardian:
   a. Arizona driver's license issued on or after October 1, 1996;
   b. Arizona identification card issued on or after October 1, 1996;
   c. Arizona registry identification card;
   d. Photograph page in the qualifying patient's custodial parent or legal guardian U.S. passport or a U.S. passport card; or
   e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient's custodial parent or legal guardian:
      i. Birth certificate verifying U.S. citizenship,
      ii. U.S. Certificate of Naturalization, or
      iii. U.S. Certificate of Citizenship;
6. If the individual submitting the application on behalf of a qualifying patient is the qualifying patient's legal guardian, a copy of documentation establishing the individual as the qualifying patient's legal guardian;
7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The qualifying patient's custodial parent or legal guardian's fingerprints on a fingerprint card that includes:
      i. The qualifying patient's custodial parent or legal guardian's first name; middle initial, if applicable; and last name;
      ii. The qualifying patient's custodial parent or legal guardian's signature;
      iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
      iv. The qualifying patient's custodial parent's or legal guardian's address;
      v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
      vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
      vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
      viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
      ix. The qualifying patient's custodial parent's or legal guardian's gender;
      x. The qualifying patient's custodial parent's or legal guardian's race;
      xi. The qualifying patient's custodial parent's or legal guardian's height;
      xii. The qualifying patient's custodial parent's or legal guardian's weight;
      xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
      xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
      xv. The qualifying patient's custodial parent's or legal guardian's place of birth;
   b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (G)(7)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the qualifying patient's custodial parent or legal guardian as a result of the application; or
   c. Documentation that the qualifying patient's custodial parent or legal guardian has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;
8. A written certification from the physician in subsection (G)(1)(i) and a separate written certification from the physician in (G)(1)(j) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
   a. The physician's:
      i. Name,
      ii. License number including an identification of the physician license type,
      iii. Office address on file with the physician's licensing board,
      iv. Telephone number on file with the physician's licensing board, and
      v. E-mail address;
   b. The qualifying patient's name and date of birth;
   c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
   d. If the debilitating medical condition identified in subsection (G)(9)(c) is a condition in:
      i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
      ii. R9-17-201(14), the debilitating medical condition;
   e. For the physician listed in subsection (G)(1)(i):
      i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
      ii. A statement, initialed by the physician, that the physician:
         (1) Has established a medical record for the qualifying patient, and
         (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
      iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
      iv. The date the physician conducted the in-person physical examination of the qualifying patient;
      v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
         (1) Medical records, including medical records from other treating physicians from the previous 12 months,
         (2) Response to conventional medications and medical therapies, and
         (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
      vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and
      vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:
         (1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and

(2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;

f. For the physician listed in subsection (G)(1)(j), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;

g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;

h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;

i. An attestation that the information provided in the written certification is true and correct; and

j. The physician's signature and the date the physician signed; and

9. The applicable fees in R9-17-102 for applying for a:
   a. Qualifying patient registry identification card, and
   b. Designated caregiver registry identification card.

H. For purposes of this Article, "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from a specific location.

I. For purposes of this Article, "residence address" when used in conjunction with a qualifying patient means:
1. The street address including town or city and zip code assigned by a local jurisdiction; or
2. For property that does not have a street address assigned by a local jurisdiction, the legal description of the property on the title documents recorded by the assessor of the county in which the property is located.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by final rulemaking 23 A.A.R. 970, effective June 6, 2017 (Supp. 17-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-203. Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card

A. To add a designated caregiver or to request a change of a qualifying patient's designated caregiver, the qualifying patient shall submit to the Department, within 10 working days after the addition or the change, the following:
1. An application in a Department-provided format that includes:
   a. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
   b. If applicable, the name of the qualifying patient's current designated caregiver and the date the designated caregiver last provided or will last provide assistance to the qualifying patient;
   c. The name of the individual the qualifying patient is designating as caregiver; and
   d. The signature of the qualifying patient and date the qualifying patient signed;
2. For the caregiver the qualifying patient is designating:
   a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The designated caregiver's date of birth;
   c. The designated caregiver's Arizona residence address and Arizona mailing address;
   d. The county where the designated caregiver resides;
   e. The identifying number on the applicable card or document in subsection (A)(2)(h)(i) through (v);
   f. An attestation in a Department-provided format signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
   g. A statement in a Department-provided format signed by the designated caregiver:
      i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
      ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
   h. A copy the designated caregiver's:
      i. Arizona driver's license issued on or after October 1, 1996;
      ii. Arizona identification card issued on or after October 1, 1996;
      iii. Arizona registry identification card;
      iv. Photograph page in the designated caregiver's U.S. passport or a U.S. passport card; or
      v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
         (1) Birth certificate verifying U.S. citizenship,
         (2) U.S. Certificate of Naturalization, or
         (3) U.S. Certificate of Citizenship;
   i. A current photograph of the designated caregiver; and
   j. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
      i. The designated caregiver's fingerprints on a fingerprint card that includes:
         (1) The designated caregiver's first name; middle initial, if applicable; and last name;
         (2) The designated caregiver's signature;
         (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
         (4) The designated caregiver's address;
         (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
         (6) The designated caregiver's date of birth;
         (7) The designated caregiver's Social Security number;
         (8) The designated caregiver's citizenship status;
         (9) The designated caregiver's gender;
         (10) The designated caregiver's race;
         (11) The designated caregiver's height;

(12) The designated caregiver's weight;
(13) The designated caregiver's hair color;
(14) The designated caregiver's eye color; and
(15) The designated caregiver's place of birth; or

ii. If the designated caregiver's fingerprints and information required in subsection (A)(2)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and

3. The applicable fee in R9-17-102 for applying for a designated caregiver registry identification card.

B. To amend a qualifying patient's address on the qualifying patient's registry identification card when the qualifying patient or the qualifying patient's designated caregiver is authorized to cultivate marijuana, the qualifying patient shall submit to the Department, within 10 working days after the change in address, the following:

1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
2. The qualifying patient's new address;
3. The county where the new address is located;
4. The name of the qualifying patient's designated caregiver, if applicable;
5. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
6. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
7. The effective date of the qualifying patient's new address; and
8. The applicable fee in R9-17-102 for applying to:
   a. Amend a qualifying patient's registry identification card; and
   b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.

C. To request authorization to cultivate marijuana based on a qualifying patient's current address or a new address, the qualifying patient shall submit to the Department, if applicable within 10 working days after the change in address, the following:

1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
2. If the qualifying patient's address is a new address, the qualifying patient's:
   a. Current address,
   b. New address,
   c. The county where the new address is located, and
   d. The effective date of the qualifying patient's new address;
3. The name of the qualifying patient's designated caregiver, if applicable;
4. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
5. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use; and
6. The applicable fee in R9-17-102 for applying to:
   a. Amend a qualifying patient's registry identification card; and
   b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). The Department made a clerical error to R19-17-203(A)(1)(c) when promulgating rules in Supp. 12-4Remediateor clarity "that" has been moved after "individual" at the request of the Department at file number R19-242 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-204. Renewing a Qualifying Patient's or Designated Caregiver's Registry Identification Card

A. Except for a qualifying patient who is under 18 years of age, to renew a qualifying patient's registry identification card, the qualifying patient shall submit the following to the Department at least 30 calendar days before the expiration date of the qualifying patient's registry identification card:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The qualifying patient's date of birth;
   c. Except as provided in subsection (A)(1)(j), the qualifying patient's Arizona residence address and Arizona mailing address;
   d. The county where the qualifying patient resides;
   e. The qualifying patient's e-mail address;
   f. The registry identification number on the qualifying patient's current registry identification card;
   g. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
   h. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
   i. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
   j. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
   k. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
   l. An attestation that the information provided in the application is true and correct; and
   m. The signature of the qualifying patient and the date the qualifying patient signed;
2. If the qualifying patient's name in subsection (A)(1)(a) is not the same name as on the qualifying patient's current registry identification card, one of the following with the qualifying patient's new name:

a. An Arizona driver's license,
b. An Arizona identification card, or
c. The photograph page in the qualifying patient's U.S. passport or a U.S. passport card;

3. A current photograph of the qualifying patient;
4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:
   a. The physician's:
      i. Name,
      ii. License number including an identification of the physician license type,
      iii. Office address on file with the physician's licensing board,
      iv. Telephone number on file with the physician's licensing board, and
      v. E-mail address;
   b. The qualifying patient's name and date of birth;
   c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
   d. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
   e. If the debilitating medical condition identified in subsection (A)(5)(d) is a condition in:
      i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
      ii. R9-17-201(14), the debilitating medical condition;
   f. A statement, initialed by the physician, that the physician:
      i. Has established a medical record for the qualifying patient, and
      ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
   g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
   h. The date the physician conducted the in-person physical examination of the qualifying patient;
   i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
      i. Medical records including medical records from other treating physicians from the previous 12 months,
      ii. Response to conventional medications and medical therapies, and
      iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
   k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
   l. A statement, initialed by the physician, that, if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
   m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:
      i. The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
      ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
   n. An attestation that the information provided in the written certification is true and correct; and
   o. The physician's signature and the date the physician signed;
6. If the qualifying patient is designating a caregiver or if the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card, the following in a Department-provided format:
   a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The designated caregiver's date of birth;
   c. The designated caregiver's Arizona residence address and Arizona mailing address;
   d. The county where the designated caregiver resides;
   e. If the qualifying patient is renewing the designated caregiver's registry identification card, the registry identification number on the designated caregiver's registry identification card associated with the qualifying patient;
   f. If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, the identification number on and a copy of the designated caregiver's:
      i. Arizona driver's license issued on or after October 1, 1996;
      ii. Arizona identification card issued on or after October 1, 1996;
      iii. Arizona registry identification card;
      iv. Photograph page in the designated caregiver's U.S. passport or a U.S. passport card; or
      v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
         (1) Birth certificate verifying U.S. citizenship,
         (2) U.S. Certificate of Naturalization, or
         (3) U.S. Certificate of Citizenship;
   g. A current photograph of the designated caregiver;
   h. An attestation signed and dated by the designated caregiver that the designated caregiver:
      i. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
      ii. Is deemed to not have been convicted of an excluded felony offence through holding a valid level I fingerprint clearance cared issued according to A.R.S. § 41-1758.07;
   i. A statement in a Department-provided format signed by the designated caregiver:
      i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
      ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and

j. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
i. The designated caregiver's fingerprints on a fingerprint card that includes:
(1) The designated caregiver's first name; middle initial, if applicable; and last name;
(2) The designated caregiver's signature;
(3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
(4) The designated caregiver's address;
(5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
(6) The designated caregiver's date of birth;
(7) The designated caregiver's Social Security number;
(8) The designated caregiver's citizenship status;
(9) The designated caregiver's gender;
(10) The designated caregiver's race;
(11) The designated caregiver's height;
(12) The designated caregiver's weight;
(13) The designated caregiver's hair color;
(14) The designated caregiver's eye color; and
(15) The designated caregiver's place of birth; ii. If the designated caregiver's fingerprints and information required in subsection (A)(6)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; or
iii. Documentation that the designated caregiver has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;
7. If the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card and the designated caregiver's name in subsection (A)(6)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
a. An Arizona driver's license,
b. An Arizona identification card, or
c. The photograph page in the designated caregiver's U.S. passport or a U.S. passport card; and
8. The applicable fees in R9-17-102 for applying to:
a. Renew a qualifying patient's registry identification card; and
b. If applicable, issue or renew a designated caregiver's registry identification card.

B. To renew a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:
1. An application in a Department-provided format that includes:
a. The qualifying patient's:
i. First name; middle initial, if applicable; last name; and suffix, if applicable; and
ii. Date of birth;
b. The qualifying patient's Arizona residence address and Arizona mailing address;
c. The county where the qualifying patient resides;
d. The registry identification number on the qualifying patient's current registry identification card;
e. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
f. The qualifying patient's custodial parent's or legal guardian's Arizona residence address and Arizona mailing address;
g. The county where the qualifying patient's custodial parent or legal guardian resides;
h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
i. The registry identification number on the qualifying patient's custodial parent's or legal guardian's current registry identification card;
j. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;
k. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the qualifying patient's medical record maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;
l. Whether the qualifying patient's custodial parent or legal guardian is requesting approval for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
n. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
i. Allowing the qualifying patient's medical use of marijuana;
ii. Agreeing to assist the qualifying patient with the medical use of marijuana; and
iii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
o. An attestation that the information provided in the application is true and correct; and
p. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;
2. If the qualifying patient's custodial parent's or legal guardian's name in subsection (B)(1)(e) is not the same name as on the qualifying patient's custodial parent's or legal guardian's current registry identification card, one of the following with the custodial parent's or legal guardian's new name:
a. An Arizona driver's license,
b. An Arizona identification card, or
c. The photograph page in the qualifying patient's custodial parent's or legal guardian's U.S. passport or a U.S. passport card;
3. A current photograph of the qualifying patient;

4. A written certification from the physician in subsection (B)(1)(j) and a separate written certification from the physician in subsection (B)(1)(k) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:
   a. The physician's:
      i. Name,
      ii. License number including an identification of the physician license type,
      iii. Office address on file with the physician's licensing board,
      iv. Telephone number on file with the physician's licensing board, and
      v. E-mail address;
   b. The qualifying patient's name and date of birth;
   c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
   d. If the debilitating medical condition identified in subsection (B)(4)(c) is a condition in:
      i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
      ii. R9-17-201(14), the debilitating medical condition;
   e. For the physician listed in subsection (B)(1)(j):
      i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
      ii. A statement, initialed by the physician, that the physician:
         (1) Has established a medical record for the qualifying patient, and
         (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
      iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
      iv. The date the physician conducted the in-person physical examination of the qualifying patient;
      v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
         (1) Medical records including medical records from other treating physicians from the previous 12 months,
         (2) Response to conventional medications and medical therapies, and
         (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
      vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and
      vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:
         (1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
         (2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
   f. For the physician listed in subsection (B)(1)(k), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;
   g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
   h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient's custodial parent or legal guardian any personal or professional relationship the physician has with the dispensary;
   i. An attestation that the information provided in the written certification is true and correct; and
   j. The physician's signature and the date the physician signed; and
5. A current photograph of the qualifying patient's custodial parent or legal guardian;
6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The qualifying patient's custodial parent's or legal guardian's fingerprints on a fingerprint card that includes:
      i. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; and last name;
      ii. The qualifying patient's custodial parent's or legal guardian's signature;
      iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
      iv. The qualifying patient's custodial parent's or legal guardian's address;
      v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
      vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
      vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
      viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
      ix. The qualifying patient's custodial parent's or legal guardian's gender;
      x. The qualifying patient's custodial parent's or legal guardian's race;
      xi. The qualifying patient's custodial parent's or legal guardian's height;
      xii. The qualifying patient's custodial parent's or legal guardian's weight;
      xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
      xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
      xv. The qualifying patient's custodial parent's or legal guardian's place of birth;
   b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (B)(6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver as a result of the application; or
   c. Documentation that the custodial parent or legal guardian has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and

7. The applicable fees in R9-17-102 for applying to renew a:
   a. Qualifying patient's registry identification card, and
   b. Designated caregiver's registry identification card.

C. Except as provided in subsection (A)(6), to renew a qualifying patient's designated caregiver's registry identification card, the qualifying patient shall submit to the Department, at least 30 calendar days before the expiration date of the designated caregiver's registry identification card, the following:

1. An application in a Department-provided format that includes:
   a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The registry identification number on the qualifying patient's current registry identification card;
   c. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
   d. The designated caregiver's date of birth;
   e. The designated caregiver's Arizona residence address and Arizona mailing address;
   f. The county where the designated caregiver resides;
   g. The registry identification number on the designated caregiver's current registry identification card;
2. If the designated caregiver's name in subsection (C)(1)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the designated caregiver's U.S. passport or a U.S. passport card;
3. A current photograph of the designated caregiver;
4. A statement in a Department-provided format signed by the designated caregiver:
   a. Agreeing to assist the qualifying patient with the medical use of marijuana; and
   b. Pledging not to divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and
5. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The designated caregiver's fingerprints on a fingerprint card that includes:
      i. The designated caregiver's first name; middle initial, if applicable; and last name;
      ii. The designated caregiver's signature;
      iii. If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
      iv. The designated caregiver's address;
      v. If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
      vi. The designated caregiver's date of birth;
      vii. The designated caregiver's Social Security number;
      viii. The designated caregiver's citizenship status;
      ix. The designated caregiver's gender;
      x. The designated caregiver's race;
      xi. The designated caregiver's height;
      xii. The designated caregiver's weight;
      xiii. The designated caregiver's hair color;
      xiv. The designated caregiver's eye color; and
      xv. The designated caregiver's place of birth;
   b. If the designated caregiver's fingerprints and information required in subsection (C)(1)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; or
   c. Documentation that the designated caregiver has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and
6. The applicable fee in R9-17-102 for renewing a designated caregiver's registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 23 A.A.R. 970, effective June 6, 2017 (Supp. 17-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-205. Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card

A. The Department shall deny a qualifying patient's application for or renewal of the qualifying patient's registry identification card if the qualifying patient does not have a debilitating medical condition.

B. The Department shall deny a designated caregiver's application for or renewal of the designated caregiver's registry identification card if the designated caregiver does not meet the definition of "designated caregiver" in A.R.S. § 36-2801.

C. The Department may deny a qualifying patient's or designated caregiver's application for or renewal of the qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver:

1. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
2. Provides false or misleading information to the Department.

D. The Department shall revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver diverts medical marijuana to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.

E. The Department shall revoke a designated caregiver's registry identification card if the designated caregiver has been convicted of an excluded felony offense.

F. The Department may revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.

G. If the Department denies or revokes a qualifying patient's registry identification card, the Department shall provide written notice to the qualifying patient that includes:

1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

H. If the Department denies or revokes a qualifying patient's designated caregiver's registry identification card, the Department shall provide written notice to the qualifying patient and the designated caregiver that includes:
1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note
New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-301. Principal Officers and Board Members

A. For the purposes of this Chapter, in addition to the individual or individuals identified in the dispensary's by-laws or other organizational governing documents as principal officers of the dispensary, if applicable, the following individuals are considered principal officers:
1. If a corporation is applying for a dispensary registration certificate, two individuals who are officers of the corporation, including, but not limited to, the president or chief executive officer and those individuals serving in the positions of secretary and treasurer;
2. If a partnership is applying for a dispensary registration certificate, all individuals who are general partners and the principal officers of any entity general partner;
3. If a limited liability company is applying for a dispensary registration certificate, all managers of a manager-managed limited liability company, all members of a member-managed limited liability company, and the principal officers of an entity manager or member;
4. If an association or cooperative is applying for a dispensary registration certificate, the chief executive officer, executive director, or other comparable leader of the association or cooperative; and
5. If a business organization type other than those described in subsections (A)(1) through (4) is applying for a dispensary registration certificate, two individuals who occupy the top leadership positions of the business organization.

B. For purposes of this Chapter, in addition to the individual or individuals identified in the dispensary's by-laws or other organizational governing documents as board members of the dispensary, if applicable, the following individuals are considered board members:
1. If a corporation is applying for a dispensary registration certificate, the members of the board of directors of the corporation;
2. If a partnership is applying for a dispensary registration certificate, the partners who are not limited partners;
3. If a limited liability company is applying for a dispensary registration certificate, the principal officers of the limited liability company;
4. If an association or cooperative is applying for a dispensary registration certificate, the principal officers of the association or cooperative; and
5. If a business organization type other than the types of business organizations in subsections (B)(1) through (4), the principal officers of the business organization.

Historical Note
New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-302. Repealed

Historical Note
New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Repealed by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4).

R9-17-303. Dispensary Registration Certificate Allocation Process

A. Each calendar year, the Department may review current valid dispensary registration certificates to determine if the Department may issue additional dispensary registration certificates pursuant to A.R.S. § 36-2804(C).
1. If the Department determines that the Department may issue additional dispensary registration certificates, the Department shall post, on the Department's website, the information that the Department is accepting dispensary registration certificate applications, including the deadline for accepting dispensary registration certificate applications.
   a. The Department shall post the information in subsection (A)(1) at least 30 calendar days before the date the Department begins accepting applications.
   b. The deadline for submission of dispensary registration certificate applications is 10 working days after the date the Department begins accepting applications.
   c. Sixty working days after the date the Department begins accepting applications, the Department shall determine if the Department received more dispensary registration certificate applications that are complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue.
      i. If the Department received more dispensary registration certificate applications than the Department is allowed to issue, the Department shall allocate any available dispensary registration certificates according to the priorities established in subsection (B).
      ii. If the Department is allowed to issue a dispensary registration certificate for each dispensary registration certificate application the Department received, the Department shall allocate the dispensary registration certificates to those applicants.
2. If the Department determines that the Department is not allowed to issue additional dispensary registration certificates, the Department shall, on the Department's website:
   a. Post the information that the Department is not accepting dispensary registration certificate applications, and
   b. Maintain the information until the next review.

B. If the Department determined, according to subsection (A)(1)(c), that more dispensary registration certificate applications were received that are complete and are in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the number of dispensary registration certificates the Department is allowed to issue, the Department shall allocate the dispensary registration certificates according to the following criteria:
1. For dispensary registration certificate applications received for a county in which no dispensary is located:
   a. If only one dispensary registration certificate application is received for a proposed dispensary located in the county, the Department shall allocate the dispensary registration certificate to that applicant; or

b. If more than one dispensary registration certificate application is received for a proposed dispensary located in the county, the Department shall prioritize and allocate a dispensary registration certificate to an applicant according to subsection (B)(2);

2. For dispensary registration certificate applications received according to subsection (B)(1)(b), the Department shall prioritize and allocate a dispensary registration certificate to an applicant according to the following:
   a. If only one dispensary registration certificate application is received for a proposed dispensary in a geographic area in the county, at a location that is at least 25 miles from another dispensary and from which another dispensary has moved, the Department shall allocate the dispensary registration certificate to that applicant;
   b. If more than one dispensary registration certificate application is received for a proposed dispensary in a geographic area in the county, at a location that is at least 25 miles from another dispensary and from which another dispensary has moved, the Department shall:
      i. Prioritize and allocate a dispensary registration certificate to an applicant based on which proposed dispensary location will provide dispensary services to the most qualifying patients within five miles of the proposed dispensary location, as determined from the number of registry identification cards issued to qualifying patients; and
      ii. If two or more dispensary registration certificate applications specify the same location from which another dispensary has moved, comply with subsection (C); and
   c. If no dispensary registration certificate applications are received for a proposed dispensary in a geographic area in the county, at a location that is at least 25 miles from another dispensary and from which another dispensary has moved, the Department shall allocate a dispensary registration certificate in the county as follows:
      i. If only one dispensary registration certificate application is received for a proposed dispensary in a geographic area in the county at a location that is at least 25 miles from another dispensary, the Department shall allocate the dispensary registration certificate to that applicant;
      ii. If more than one dispensary registration certificate application is received for a proposed dispensary in a geographic area in the county at a location that is at least 25 miles from another dispensary, the Department shall allocate a dispensary registration certificate to an applicant at a location that is at least 25 miles from another dispensary based on random drawing; and
      iii. If no dispensary registration certificate is allocated according to subsection (B)(2)(c)(i) or (ii), the Department shall allocate a dispensary registration certificate to an applicant for a proposed dispensary located in the county based on random drawing;
3. If additional dispensary registration certificates are available after dispensary registration certificates are allocated, for each county in which no dispensary is located, according to subsection (B)(1) or (2), the Department shall allocate the additional dispensary registration certificates for a location in any geographic area as follows:
   a. If the number of dispensary registration certificate applications received for a proposed dispensary at a location that is at least 25 miles from another dispensary, including a dispensary allocated a dispensary registration certificate according to subsection (B)(1) or (2), and from which another dispensary has moved is less than or equal to the number of available dispensary registration certificates, the Department shall allocate the dispensary registration certificates to those applicants; or
   b. If the number of dispensary registration certificate applications received for a proposed dispensary at a location that is at least 25 miles from another dispensary, including a dispensary allocated a dispensary registration certificate according to subsection (B)(1) or (2), and from which another dispensary has moved is greater than the number of available dispensary registration certificates, the Department shall:
      i. Prioritize and allocate dispensary registration certificates to applicants based on which proposed dispensary location will provide dispensary services to the most qualifying patients within five miles of the proposed dispensary location, as determined from the number of registry identification cards issued to qualifying patients; and
      ii. If two or more dispensary registration certificate applications specify the same location from which another dispensary has moved, comply with subsection (C);
4. If additional dispensary registration certificates are available after dispensary registration certificates are allocated according to subsections (B)(1), (2), and (3), the Department shall allocate the dispensary registration certificates for a location in any geographic area as follows:
   a. If the number of dispensary registration certificate applications received for a proposed dispensary at a location that is at least 25 miles from another dispensary, including a dispensary allocated a dispensary registration certificate according to subsection (B)(1), (2), or (3), is less than or equal to the number of available dispensary registration certificates, the Department shall allocate a dispensary registration certificate to those applicants; or
   b. If the number of dispensary registration certificate applications received for a proposed dispensary at a location that is at least 25 miles from another dispensary, including a dispensary allocated a dispensary registration certificate according to subsection (B)(1), (2), or (3), is greater than the number of available dispensary registration certificates, the Department shall allocate a dispensary registration certificate to an applicant:
      i. Based on random drawing; and
      ii. If two or more dispensary registration certificate applications specify the same location, comply with subsection (C); and
5. If additional dispensary registration certificates are available after dispensary registration certificates are allocated according to subsections (B)(1) through (4), for all dispensary registration certificate applications not allocated a dispensary registration certificate, the Department shall allocate a dispensary registration certificate to an applicant:
   a. Based on random drawing; and
   b. If two or more dispensary registration certificate applications specify the same location, comply with subsection (C).

C. The Department shall randomly select one dispensary registration certificate application for allocation of a dispensary registration certificate if:
1. There is a tie or a margin of 0.1% or less in the scores generated by applying the criteria in subsection (B), or
2. Two or more dispensary registration certificate applications specify the same location.

D. For purposes of subsection (B):
1. "Five miles" includes the area contained within a circle that extends for five miles in all directions from a specific location, not the distance travelled from the specific location by road; and
2. "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from the center of a proposed dispensary location, not the distance travelled from one location to another location by road.

E. If the Department does not allocate a dispensary registration certificate to an applicant that had submitted a dispensary registration certificate application that the Department determined was complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process, the Department shall provide a written notice to the applicant that states that, although the applicant's dispensary registration certificate application was complete and complied with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department did not allocate the applicant a dispensary registration certificate under the processes in this Section.

F. If the Department receives a dispensary registration certificate application at a time other than the time stated in subsection (B), the Department shall return the dispensary registration certificate application, including the application fee, to the applicant.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-304. Applying for a Dispensary Registration Certificate

A. An individual shall not be a principal officer or board member on more than five dispensary registration certificate applications.

B. If the Department determines that an individual is a principal officer or board member on more than five dispensary registration certificate applications, the Department shall review the applications and provide the applicant on each of the dispensary registration certificate applications with a written comprehensive request for more information that includes the specific requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter that the dispensary registration certificate application does not comply with.

1. If an applicant withdraws an application to comply with this Chapter and submits information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall process the applicant's remaining dispensary registration certificate applications according to this Chapter.
2. If an applicant does not withdraw an application or submit information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue a denial to the applicant according to R9-17-322.
3. An application fee submitted with a dispensary registration certificate application in subsection (B) that is withdrawn is not refunded.

C. To apply for a dispensary registration certificate, an applicant shall submit to the Department the following:

1. An application in a Department-provided format that includes:
   a. The legal name of the proposed dispensary;
   b. The physical address of the proposed dispensary;
   c. The name of the geographic area;
   d. The county in which the geographic area in subsection (C)(1)(c) is located;
   e. If applicable, the name of the dispensary that previously held a dispensary registration certificate at the physical address of the proposed dispensary and the approximate date the dispensary left the location;
   f. The following information for the applicant:
      i. Name of the entity applying,
      ii. Type of business organization,
      iii. Arizona mailing address,
      iv. Telephone number, and
      v. Email address;
   g. The name of the principal officer or board member designated to submit dispensary agent registry identification card applications on behalf of the proposed dispensary;
   h. The name and professional license number of the proposed dispensary's medical director;
   i. The name, residence address, and date of birth of each:
      i. Principal officer, and
      ii. Board member;
   j. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
   k. A statement that, if the applicant is issued a dispensary registration certificate, the proposed dispensary will not operate until the proposed dispensary is inspected and obtains an approval to operate from the Department;
   l. A statement that the applicant understands that, if the applicant is issued a dispensary registration certificate, the dispensary may relocate only as specified in A.R.S. § 36-2803.01(D);
   m. An attestation that the information provided to the Department to apply for a dispensary registration certificate is true and correct; and
   n. The signatures of each principal officer and each board member of the proposed dispensary according to R9-17-301 and the date signed;
2. If the applicant is one of the business organizations in R9-17-301(A)(2) through (5), a copy of documentation that the applicant is in good standing with the Arizona Corporation Commission;
3. For each principal officer and each board member:
   a. An attestation signed and dated by the principal officer or board member that the principal officer or board member:
      i. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
      ii. Is deemed to not have been convicted of an excluded felony offence through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and
   b. Documentation that the principal officer or board member has a valid marijuana facility agent license;
4. Policies and procedures that comply with the requirements in this Chapter for:
   a. Inventory control,
   b. Qualifying patient recordkeeping, and
   c. Security;
5. As required in A.R.S. § 36-2804(B)(1)(d), a sworn statement, signed and dated by each principal officer and each board member of the proposed dispensary according to R9-17-301, certifying that the proposed dispensary is in compliance with any local zoning restrictions;
6. A statement, in a Department-provided format, signed and dated within 60 calendar days before the date of the application by a representative of the local jurisdiction:
   a. Certifying that the proposed dispensary is in compliance with any local zoning restrictions; and
   b. Including:
      i. Information identifying the local jurisdiction and the local jurisdiction's representative,
      ii. The legal name of the proposed dispensary, and
      iii. The physical address of the proposed dispensary as specified according to subsection (C)(1)(b);
7. Documentation, in a Department-provided format, of:
   a. Ownership by the applicant of the physical address of the proposed dispensary, signed and dated within 60 calendar days before the date of the application; or

b. Permission from the owner of the physical address of the proposed dispensary for the applicant for a dispensary registration certificate to operate a dispensary at the physical address, signed, notarized, and dated within 60 calendar days before the date of the application; and

8. The applicable fee in R9-17-102 for applying for a dispensary registration certificate.

D. Before an entity with a dispensary registration certificate begins operating a dispensary, the entity shall apply for and obtain an approval to operate a dispensary from the Department.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-305. Applying for Approval to Operate a Dispensary

A. To apply for approval to operate a dispensary, a person holding a dispensary registration certificate shall submit to the Department, and, if the dispensary registration certificate was issued on or after April 1, 2020, within 18 months after the dispensary registration certificate was issued, the following:

1. An application in a Department-provided format that includes:
   a. The name and registry identification number of the dispensary;
   b. The physical address of the dispensary;
   c. The name, address, and date of birth of each dispensary agent;
   d. Except as provided in R9-17-324, the name and professional license number of the dispensary's medical director;
   e. If applicable, the physical address of the dispensary's cultivation site;
   f. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
   g. The dispensary's proposed hours of operation during which the dispensary plans to be available to dispense medical marijuana to qualifying patients and designated caregivers;
   h. Whether the dispensary plans to:
      i. Cultivate marijuana;
      ii. Manufacture marijuana products;
      iii. Prepare marijuana-infused edible products; or
      iv. Sell or dispense marijuana-infused edible products that are either:
         (1) A time/temperature control for safety food, or
         (2) Not prepared in individually packaged containers;
   i. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
   j. Whether the dispensary and, if applicable, the dispensary's cultivation site are ready for an inspection by the Department;
   k. If the dispensary and, if applicable, the dispensary's cultivation site are not ready for an inspection by the Department, the date the dispensary and, if applicable, the dispensary's cultivation site will be ready for an inspection by the Department;
   l. An attestation that the information provided to the Department to apply for approval to operate a dispensary is true and correct; and
   m. The signatures of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;
2. A copy of the dispensary's license or permit of the location as a food establishment, issued under 9 A.A.C. 8, Article 1, if the dispensary plans to:
   a. Prepare marijuana-infused edible food products, as specified in subsection (A)(1)(h)(iii); or
   b. Sell or dispense marijuana-infused edible food products, as specified in subsection (A)(1)(h)(iv);
3. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the building as a dispensary and, if applicable, as the dispensary's cultivation site, such as a certificate of occupancy, a special use permit, or a conditional use permit;
4. The distance to the closest private school or public school from:
   a. The dispensary; and
   b. If applicable, the dispensary's cultivation site;
5. A site plan drawn to scale of the dispensary location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;
6. A floor plan drawn to scale of the building where the dispensary is located showing the:
   a. Layout and dimensions of each room,
   b. Name and function of each room,
   c. Location of each hand washing sink,
   d. Location of each toilet room,
   e. Means of egress,
   f. Location of each video camera,
   g. Location of each panic button, and
   h. Location of natural and artificial lighting sources;
7. If applicable, a site plan drawn to scale of the dispensary's cultivation site showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
8. If applicable, a floor plan drawn to scale of each building at the dispensary's cultivation site showing the:
   a. Layout and dimensions of each room,
   b. Name and function of each room,
   c. Location of each hand washing sink,
   d. Location of each toilet room,
   e. Means of egress,
   f. Location of each video camera,
   g. Location of each panic button, and
   h. Location of natural and artificial lighting sources.

B. A dispensary's cultivation site may be located anywhere in the state where a cultivation site is allowed by the local jurisdiction.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-306. Changes to a Dispensary Registration Certificate

A. Except as provided in R9-17-324, a dispensary may not transfer or assign the dispensary registration certificate.

B. A dispensary may change the location of the:

1. Dispensary:
   a. If the dispensary was allocated a dispensary registration certificate on or after April 1, 2020, according to A.R.S. § 36-2803.01(D); and
   b. If the dispensary was allocated a dispensary registration certificate before April 1, 2020:
      i. Within the first three years after the Department issued the dispensary's registration certificate, to another location in the geographic area where the dispensary is located; or
      ii. After the first three years after the Department issued a dispensary registration certificate to the dispensary, to another location in the state; or
2. Dispensary's cultivation site to another location in the state.

C. A dispensary or the dispensary's cultivation site shall not cultivate, manufacture, distribute, dispense, or sell medical marijuana at a new location or make a change in the activities conducted at a current location until the dispensary:

1. Submits an application for a change in R9-17-307; and
2. Receives an amended dispensary registration certificate or an approval for:
   a. The dispensary's new location, including the activities to be conducted at the new location;
   b. The dispensary's cultivation site's new location, including the activities to be conducted at the new location; or
   c. The requested change in the activities conducted at a current location.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 1587, with an immediate effective date of September 7, 2021 (Supp. 21-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-307. Applying to Change a Dispensary Registration Certificate

A. A dispensary shall submit a separate application to the Department for each request for one of the possible changes in R9-17-306(C).

B. To request any of the changes specified in R9-17-306(C), a the dispensary shall submit to the Department:

1. The following information in a Department-provided format:
   a. The legal name of the dispensary;
   b. The registry identification number for the dispensary;
   c. Whether the request is for:
      i. A change of location for the dispensary,
      ii. A change of location for the dispensary's cultivation site,
      iii. An addition of a cultivation site, or
      iv. A change in the activities conducted at a current location;
   d. The current physical address of the dispensary or the dispensary's cultivation site;
   e. The physical address of the proposed location for the dispensary or the dispensary's cultivation site, if applicable;
   f. For a change of location or an addition of a cultivation site, the distance to the closest public school or private school from:
      i. The proposed location for the dispensary, or
      ii. The proposed location for the dispensary's cultivation site;
   g. For a request to change activities conducted at a current location or include any of the following activities at a new location, whether the dispensary plans to:
      i. Cultivate marijuana;
      ii. Manufacture marijuana products;
      iii. Prepare marijuana-infused edible products; or
      iv. Sell or dispense marijuana-infused edible products that are either:
         (1) A time/temperature control for safety food, or
         (2) Not prepared in individually packaged containers;
   h. The name of the entity applying;
   i. If applicable, the anticipated date of the change of location or activities;
   j. Whether the proposed dispensary, the dispensary's proposed cultivation site, or the location of the change in activities is ready for an inspection by the Department;
   k. If the proposed dispensary, the dispensary's proposed cultivation site, or the location of the change in activities is not ready for an inspection by the Department, the date the dispensary, the dispensary's proposed cultivation site, or the location of the change in activities will be ready for an inspection by the Department;
   l. An attestation that the information provided to the Department to apply for a change in location is true and correct; and
   m. The signature of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;
2. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the proposed building as a dispensary or location as the dispensary's cultivation site for the activities to be conducted at the location, such as a certificate of occupancy, a special use permit, or a conditional use permit;
3. A copy of the dispensary's license or permit of the location as a food establishment, issued under 9 A.A.C. 8, Article 1, if the dispensary plans to:
   a. Prepare marijuana-infused edible food products, as specified in subsection (B)(1)(g)(iii); or
   b. Sell or dispense marijuana-infused edible food products, as specified in subsection (B)(1)(g)(iv);
4. A copy of documentation, in a Department-provided format, of:
   a. Ownership of the physical address of the proposed dispensary, proposed cultivation site, or location for the change in activities, signed and dated within 60 calendar days before the date of the request; or
   b. Permission from the owner of the physical address of the proposed dispensary, proposed cultivation site, or location for the change in activities, for the dispensary to operate a dispensary or conduct the specified activities at the physical address,

signed, notarized, and dated within 60 calendar days before the date of the request;

5. If the change in location is for the dispensary:
   a. A site plan drawn to scale of the proposed dispensary location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
   b. A floor plan drawn to scale of the building where the proposed dispensary is located showing the:
      i. Layout and dimensions of each room,
      ii. Name and function of each room,
      iii. Location of each hand washing sink,
      iv. Location of each toilet room,
      v. Means of egress,
      vi. Location of each video camera,
      vii. Location of each panic button, and
      viii. Location of natural and artificial lighting sources;
6. If the change in location is for the dispensary's cultivation site or if adding a cultivation site:
   a. A site plan drawn to scale of the dispensary's proposed cultivation site showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
   b. If applicable, a floor plan drawn to scale of each building used by the dispensary's proposed cultivation site showing the:
      i. Layout and dimensions of each room,
      ii. Name and function of each room,
      iii. Location of each hand washing sink,
      iv. Location of each toilet room,
      v. Means of egress,
      vi. Location of each video camera,
      vii. Location of each panic button, and
      viii. Location of natural and artificial lighting sources; and
7. The applicable fee in R9-17-102 for applying for a change in location or the addition of a cultivation site.

C. If the information and documents submitted by the dispensary comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue an amended dispensary registration certificate that includes the new address of the new location or the new activities and retains the expiration date of the previously issued dispensary registration certificate.

D. An application for a change in location of a dispensary or a dispensary's cultivation site or the addition of a cultivation site may not be combined with an application for renewing a dispensary registration certificate. The Department shall process each application separately according to the applicable time-frame established in R9-17-107.

E. A dispensary shall submit written notification to the Department when the dispensary no longer uses a previously approved cultivation site.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-308. Renewing a Dispensary Registration Certificate

To renew a dispensary registration certificate, a dispensary that has an approval to operate a dispensary issued by the Department, shall submit to the Department, at least 30 calendar days before the expiration date of the dispensary's current dispensary registration certificate, the following:

1. An application in a Department-provided format that includes:
   a. The legal name of the dispensary;
   b. The registry identification number for the dispensary;
   c. If the dispensary is a dual licensee, the marijuana establishment license number;
   d. The physical address of the dispensary;
   e. The name of the entity applying;
   f. Except as provided in R9-17-324(D), the name and license number of the dispensary's medical director;
   g. The dispensary's hours of operation during which the dispensary is available to dispense medical marijuana to qualifying patients and designated caregivers;
   h. The name, address, date of birth, and registry identification number of each:
      i. Principal officer,
      ii. Board member, and
      iii. Dispensary agent;
   i. For each principal officer or board member, whether the principal officer or board member:
      i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked,
      ii. Has served as a principal officer or board member for a marijuana establishment that had the marijuana establishment license revoked, or
      iii. Is a physician currently providing written certifications for qualifying patients;
   j. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
   k. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
   l. An attestation that the information provided to the Department to renew the dispensary registration certificate is true and correct; and
   m. The signature of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;
2. Either:
   a. An attestation, in a Department-provided format, that the dispensary is operating on a not-for-profit basis; or
   b. Both of the following:
      i. A copy of an annual financial statement for the previous two years, or for the portion of the previous two years the dispensary was operational, prepared according to generally accepted accounting principles; and

ii. A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (2)(b)(i); and

3. The applicable fee in R9-17-102 for applying to renew a dispensary registration certificate.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by exempt rulemaking at 27 A.A.R. 1229, with an immediate effective date of July 23, 2021; amended by exempt rulemaking at 27 A.A.R. 1587, with an immediate effective date of September 7, 2021 (Supp. 21-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-309. Inspections

A. Submission of an application for a dispensary registration certificate constitutes permission for entry to and inspection of the dispensary and, if applicable, the dispensary's cultivation site.

B. Except as provided in subsection (D), an onsite inspection of a dispensary or the dispensary's cultivation site shall occur at a date and time agreed to by the dispensary and the Department that is no later than five working days after the date the Department submits a written request to the dispensary to schedule the certification or compliance inspection, unless the Department agrees to a later date and time.

C. The Department shall not accept allegations of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.

D. If the Department receives an allegation of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the dispensary or the dispensary's cultivation site.

E. If the Department identifies a violation of A.R.S. Title 36, Chapter 28.1 or this Chapter during an inspection of a dispensary or the dispensary's cultivation site:

1. The Department shall provide the dispensary with a written notice that includes the specific rule or statute that was violated; and
2. The dispensary shall notify the Department in writing, with a postmark date within 20 working days after the date of the notice of violations, identifying the corrective actions taken and the date of the correction.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-310. Administration

A. A dispensary shall:

1. Ensure that the dispensary is operating and available to dispense medical marijuana and marijuana products to qualifying patients and designated caregivers:
   a. At least 30 hours weekly between the hours of 7:00 a.m. and 10:00 p.m.; and
   b. For a dispensary with a dispensary registration certificate issued on or after April 1, 2020:
      i. At the location specified according to R9-17-304(C)(1)(b), and
      ii. Within 18 months after receiving the dispensary registration certificate;
2. Develop, document, and implement policies and procedures regarding:
   a. Job descriptions and employment contracts, including:
      i. Personnel duties, authority, responsibilities, and qualifications;
      ii. Personnel supervision;
      iii. Training in and adherence to confidentiality requirements;
      iv. Periodic performance evaluations; and
      v. Disciplinary actions;
   b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
   c. Inventory control, including:
      i. Tracking;
      ii. Packaging;
      iii. Accepting marijuana from qualifying patients and designated caregivers;
      iv. Acquiring marijuana or marijuana products from other dispensaries;
      v. Providing marijuana or marijuana products to another dispensary; and
      vi. Either:
         (1) Providing samples of marijuana or marijuana products to a laboratory for testing, or
         (2) Allowing a laboratory agent access to medical marijuana or marijuana product to collect samples;
   d. Laboratory testing, including:
      i. The analytes, including possible contaminants, to be tested for;
      ii. The process for separating a batch of marijuana or of a marijuana product until laboratory testing has been completed and testing results received by the dispensary;
      iii. The process for collecting samples of medical marijuana or a marijuana product for laboratory testing, including:
         (1) The amount to be collected from each batch,
         (2) The method for ensuring that a sample collected is representative of the batch,
         (3) The packaging of the sample,
         (4) The method for documenting chain of custody for the sample, and
         (5) Methods to deter tampering with the sample and to determine whether tampering has occurred;
      iv. The process for submitting a sample of medical marijuana or a marijuana product to a laboratory agent or laboratory for testing;

v. The process for requesting retesting of the remaining portion of a sample of medical marijuana or a marijuana product; and
vi. Actions to be taken on the basis of laboratory testing results;
e. Remediation, including:
i. Criteria for when a batch of medical marijuana or marijuana product can be remediated;
ii. The process by which each type of medical marijuana or marijuana product is remediated, including the methods for remediation and subsequent retesting; and
iii. Documentation of the remediation process;
f. Disposal of medical marijuana or a marijuana product, including:
i. Destroying a batch of marijuana or a marijuana product that does not meet the requirements in Table 3.1 and documenting the destruction;
ii. Submitting marijuana that is not usable marijuana to a local law enforcement agency and documenting the submission; or
iii. Otherwise disposing of marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting the method of disposal, the laboratory agent overseeing the disposal, and the date of disposal;
g. Qualifying patient records, including purchases, denials of sale, any delivery options, confidentiality, and retention; and
h. Patient education and support, including the development and distribution of materials on:
i. Availability of different strains of marijuana and the purported effects of the different strains;
ii. Information about the purported effectiveness of various methods, forms, and routes of medical marijuana administration;
iii. Information about laboratory testing, the analytes for which the dispensary receives testing results, the right to receive a copy of the final report of testing specified in R9-17-404.06 upon request, and how to read and understand the final report of testing;
iv. Methods of tracking the effects on a qualifying patient of different strains and forms of marijuana; and
v. Prohibition on the smoking of medical marijuana in public places;
3. Maintain copies of the policies and procedures at the dispensary and provide copies to the Department for review upon request;
4. Review dispensary policies and procedures at least once every 12 months from the issue date of the dispensary registration certificate and update as needed;
5. Except as provided in R9-17-324(D), employ or contract with a medical director;
6. Ensure that each dispensary agent or marijuana facility agent associated with the dispensary has the applicable registry identification card or marijuana facility agent license in the dispensary agent's or marijuana facility agent's immediate possession when the dispensary agent or marijuana facility agent is:
a. Working or providing volunteer services at the dispensary or the dispensary's cultivation site, or
b. Transporting marijuana for the dispensary;
7. Except as provided in R9-17-324(C), ensure that a dispensary agent or marijuana facility agent associated with the dispensary accompanies any individual other than another dispensary agent or marijuana facility agent associated with the dispensary when the individual is present in the enclosed, locked facility where marijuana is cultivated by the dispensary;
8. Not allow an individual who does not possess a dispensary agent registry identification card issued under the dispensary registration certificate or marijuana facility agent license associated with the dispensary to:
a. Serve as a principal officer or board member for the dispensary,
b. Serve as the medical director for the dispensary,
c. Be employed by the dispensary, or
d. Provide volunteer services at or on behalf of the dispensary;
9. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a dispensary agent or marijuana facility agent associated with the dispensary no longer:
a. Serves as a principal officer or board member for the dispensary,
b. Serves as the medical director for the dispensary,
c. Is employed by the dispensary, or
d. Provides volunteer services at or on behalf of the dispensary;
10. Document and report any loss or theft of marijuana from the dispensary to the appropriate law enforcement agency;
11. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request;
12. Post the following information in a place that can be viewed by individuals entering the dispensary:
a. If applicable, the dispensary's approval to operate;
b. The dispensary's registration certificate;
c. Except as provided in R9-17-324(D), the name of the dispensary's medical director and the medical director's professional license number on a sign at least 20 centimeters by 30 centimeters;
d. The hours of operation during which the dispensary will dispense medical marijuana to a qualifying patient or a designated caregiver;
e. A sign in a Department-provided format that contains the following language:
i. "WARNING: There may be potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding," and
ii. "WARNING: Use of marijuana during pregnancy may result in a risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;" and
iii. A sign stating that a qualifying patient has the right to receive the results of laboratory testing of medical marijuana or a marijuana product; and
f. A sign stating that a qualifying patient has the right to receive the results of laboratory testing of medical marijuana or a marijuana product; and
13. Except as provided in R9-17-324(D):
a. Not lend any part of the dispensary's income or property without receiving adequate security and a reasonable rate of interest,
b. Not purchase property for more than adequate consideration in money or cash equivalent,
c. Not pay compensation for salaries or other compensation for personal services that is in excess of a reasonable allowance,
d. Not sell any part of the dispensary's property or equipment for less than adequate consideration in money or cash equivalent, and
e. Not engage in any other transaction that results in a substantial diversion of the dispensary's income or property.

B. If a dispensary cultivates marijuana, the dispensary shall cultivate the marijuana in an enclosed, locked facility.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by final rulemaking at 23 A.A.R. 970, effective June 6, 2017 (Supp. 17-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card

Except as provided in R9-17-107(F) or R9-17-324(C), to obtain a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or on behalf of the dispensary, the dispensary shall submit to the Department the following for each individual:

1. An application in a Department-provided format that includes:
   a. The individual's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The individual's residence address and Arizona mailing address;
   c. The county where the individual resides;
   d. The individual's date of birth;
   e. The identifying number on the applicable card or document in subsection (4)(a) through (e);
   f. The name and registry identification number of the dispensary; and
   g. The signature of the individual in R9-17-304(C)(1)(d) or of a principal officer or board member, as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date signed;
2. An attestation signed and dated by the individual that the individual:
   a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
   b. Is deemed to not have been convicted of an excluded felony offence through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;
3. A statement in a Department-provided format signed by the individual pledging not to divert marijuana to any other individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
4. A copy of the individual's:
   a. Arizona driver's license issued on or after October 1, 1996;
   b. Arizona identification card issued on or after October 1, 1996;
   c. Arizona registry identification card;
   d. Photograph page in the individual's U.S. passport or a U.S. passport card; or
   e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the individual:
      i. Birth certificate verifying U.S. citizenship,
      ii. U.S. Certificate of Naturalization, or
      iii. U.S. Certificate of Citizenship;
5. A current photograph of the individual;
6. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.05:
   a. The individual's fingerprints on a fingerprint card that includes:
      i. The individual's first name; middle initial, if applicable; and last name;
      ii. The individual's signature;
      iii. If different from the individual, the signature of another individual physically rolling the individual's fingerprints;
      iv. The individual's address;
      v. If applicable, the individual's surname before marriage and any names previously used by the individual;
      vi. The individual's date of birth;
      vii. The individual's Social Security number;
      viii. The individual's citizenship status;
      ix. The individual's gender;
      x. The individual's race;
      xi. The individual's height;
      xii. The individual's weight;
      xiii. The individual's hair color;
      xiv. The individual's eye color; and
      xv. The individual's place of birth;
   b. If the individual's fingerprints and information required in subsection (6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card for another dispensary, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the individual as a result of the application; or
   c. Documentation that the individual has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and
7. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-312. Submitting an Application to Renew a Dispensary Agent's Registry Identification Card

To renew a dispensary agent's registry identification card, a dispensary shall submit to the Department, at least 30 calendar days before the expiration of the dispensary agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
   a. The dispensary agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The dispensary agent's residence address and Arizona mailing address;
   c. The county where the dispensary agent resides;

d. The dispensary agent's date of birth;
e. The registry identification number on the dispensary agent's current registry identification card;
f. The name and registry identification number of the dispensary; and
g. The signature of the individual in R9-17-304(C)(1)(d) or of a principal officer or board member, as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date signed;

2. An attestation signed and dated by the dispensary agent that the dispensary agent:
   a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, or
   b. Is deemed to not have been convicted of an excluded felony offence through holding a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07;
3. If the dispensary agent's name in subsection (1)(a) is not the same name as on the dispensary agent's current registry identification card, one of the following with the dispensary agent's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the dispensary agent's U.S. passport or a U.S. passport card;
4. A statement in a Department-provided format signed by the dispensary agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A current photograph of the dispensary agent;
6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
   a. The dispensary agent's fingerprints on a fingerprint card that includes:
      i. The dispensary agent's first name; middle initial, if applicable; and last name;
      ii. The dispensary agent's signature;
      iii. If different from the dispensary agent, the signature of the individual physically rolling the dispensary agent's fingerprints;
      iv. The dispensary agent's address;
      v. If applicable, the dispensary agent's surname before marriage and any names previously used by the dispensary agent;
      vi. The dispensary agent's date of birth;
      vii. The dispensary agent's Social Security number;
      viii. The dispensary agent's citizenship status;
      ix. The dispensary agent's gender;
      x. The dispensary agent's race;
      xi. The dispensary agent's height;
      xii. The dispensary agent's weight;
      xiii. The dispensary agent's hair color;
      xiv. The dispensary agent's eye color; and
      xv. The dispensary agent's place of birth;
   b. If the dispensary agent's fingerprints and information required in subsection (6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card for another dispensary, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the dispensary agent as a result of the application; or
   c. Documentation that the dispensary agent has a valid level I fingerprint clearance card issued according to A.R.S. § 41-1758.07; and
7. The applicable fee in R9-17-102 for applying to renew a dispensary agent's registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-313. Medical Director

A. Except as provided in R9-17-324(D), a dispensary shall appoint an individual who is a physician to function as a medical director.

B. During a dispensary's hours of operation, a medical director or an individual who is a physician and is designated by the medical director to serve as medical director in the medical director's absence is:
1. Onsite; or
2. Able to be contacted by any means possible, such as by telephone or pager.

C. A medical director shall:
1. Develop and provide training to the dispensary's dispensary agents at least once every 12 months from the initial date of the dispensary's registration certificate on the following subjects:
   a. Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;
   b. Guidelines for providing support to qualifying patients related to the qualifying patient's self-assessment of the qualifying patient's symptoms, including a rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, and agitation;
   c. Recognizing signs and symptoms of substance abuse; and
   d. Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and
2. Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary.

D. A medical director shall provide oversight for the development and dissemination of:
1. Educational materials for qualifying patients and designated caregivers that include:
   a. Alternative medical options for the qualifying patient's debilitating medical condition;
   b. Information about possible side effects of and contraindications for medical marijuana including possible impairment with use and operation of a motor vehicle or heavy machinery, when caring for children, or of job performance;
   c. Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;

d. A description of the potential for differing strengths of medical marijuana strains and products;
e. Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, non-prescription drugs, and supplements;
f. Techniques for the use of medical marijuana and marijuana paraphernalia;
g. Information about different methods, forms, and routes of medical marijuana administration;
h. Signs and symptoms of substance abuse, including tolerance, dependency, and withdrawal; and
i. A listing of substance abuse programs and referral information;

2. A system for a qualifying patient or the qualifying patient's designated caregiver to document the qualifying patient's pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, or agitation that includes:
a. A log book, maintained by the qualifying patient and or the qualifying patient's designated caregiver, in which the qualifying patient or the qualifying patient's designated caregiver may track the use and effects of specific medical marijuana strains and products;
b. A rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscles spasms, and agitation;
c. Guidelines for the qualifying patient's self-assessment or, if applicable, assessment of the qualifying patient by the qualifying patient's designated caregiver; and
d. Guidelines for reporting usage and symptoms to the physician providing the written certification for medical marijuana and any other treating physicians; and

3. Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana.

E. A medical director for a dispensary shall not provide a written certification for medical marijuana for any qualifying patient.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-314. Dispensing Medical Marijuana

A. Before a dispensary agent dispenses medical marijuana or a marijuana product to a qualifying patient or a designated caregiver, the dispensary agent shall:
1. Verify the qualifying patient's or the designated caregiver's identity,
2. Offer any appropriate patient education or support materials,
3. Make available the results of testing of the medical marijuana or marijuana product required in R9-17-317.01(A), if requested by the qualifying patient or designated caregiver,
4. Enter the qualifying patient's or designated caregiver's registry identification number on the qualifying patient's or designated caregiver's registry identification card into the medical marijuana electronic verification system,
5. Verify the validity of the qualifying patient's or designated caregiver's registry identification card,
6. Verify that the amount of medical marijuana or marijuana product the qualifying patient or designated caregiver is requesting would not cause the qualifying patient to exceed the limit on obtaining no more than two and one-half ounces of medical marijuana during any 14-calendar-day period, and
7. Enter the following information into the medical marijuana electronic verification system for the qualifying patient or designated caregiver:
a. The amount of medical marijuana dispensed,
b. Whether the medical marijuana was dispensed to the qualifying patient or to the qualifying patient's designated caregiver,
c. The date and time the medical marijuana was dispensed,
d. The dispensary agent's registry identification number, and
e. The dispensary's registry identification number.

B. A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is dispensed in a container made of material that will not react with or leach into the medical marijuana or marijuana product.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020 (Supp. 20-4).

R9-17-315. Qualifying Patient Records

A. A dispensary shall ensure that:
1. A qualifying patient record is established and maintained for each qualifying patient who obtains medical marijuana or a marijuana product from the dispensary;
2. An entry in a qualifying patient record:
a. Is recorded only by a dispensary agent authorized by dispensary policies and procedures to make an entry,
b. Is dated and signed by the dispensary agent,
c. Includes the dispensary agent's registry identification number, and
d. Is not changed to make the initial entry illegible;
3. If an electronic signature is used to sign an entry, the dispensary agent whose signature the electronic code represents is accountable for the use of the electronic signature;
4. A qualifying patient record is only accessed by a dispensary agent authorized by dispensary policies and procedures to access the qualifying patient record;
5. A qualifying patient record is provided to the Department for review upon request;
6. A qualifying patient record is protected from loss, damage, or unauthorized use; and
7. A qualifying patient record is maintained for five years after the date of the qualifying patient's or, if applicable, the qualifying patient's designated caregiver's last request for medical marijuana from the dispensary.

B. If a dispensary maintains qualifying patient records electronically, the dispensary shall ensure that:
1. There are safeguards to prevent unauthorized access, and
2. The date and time of an entry in a qualifying patient record is recorded electronically by an internal clock.

C. A dispensary shall ensure that the qualifying patient record for a qualifying patient who requests or whose designated caregiver on behalf of the qualifying patient requests medical marijuana or a marijuana product from the dispensary contains:
1. Qualifying patient information that includes:

a. The qualifying patient's name;
b. The qualifying patient's date of birth; and
c. The name of the qualifying patient's designated caregiver, if applicable;

2. Documentation of any patient education and support materials provided to the qualifying patient or the qualifying patient's designated caregiver, including a description of the materials and the date the materials were provided; and
3. For each time the qualifying patient requests and does not obtain medical marijuana or a marijuana product or, if applicable, the designated caregiver requests on behalf of the qualifying patient and does not obtain medical marijuana or a marijuana product from the dispensary, the following:
   a. The date,
   b. The name and registry identification number of the individual who requested the medical marijuana or marijuana product, and
   c. The dispensary's reason for refusing to provide the medical marijuana or marijuana product.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-316. Inventory Control System

A. A dispensary shall designate in writing a dispensary agent or marijuana facility agent associated with the dispensary who has oversight of the dispensary's medical marijuana inventory control system.

B. A dispensary shall only acquire marijuana from:
1. The dispensary's cultivation site,
2. Another dispensary or another dispensary's cultivation site,
3. A marijuana establishment licensed under 9 A.A.C. 18,
4. A qualifying patient authorized by the Department to cultivate marijuana, or
5. A designated caregiver authorized by the Department to cultivate marijuana.

C. A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana and marijuana products that documents:
1. The following amounts:
   a. Each day's beginning inventory of medical marijuana and marijuana products,
   b. Acquisitions according to subsection (B),
   c. Medical marijuana harvested by the dispensary,
   d. Medical marijuana and marijuana products provided to another dispensary,
   e. Medical marijuana and marijuana products dispensed to a qualifying patient or designated caregiver,
   f. Medical marijuana and marijuana products submitted to a laboratory for testing according to R9-17-317.01,
   g. Medical marijuana or marijuana products that were disposed of, and
   h. The day's ending medical marijuana and marijuana products inventory;
2. For acquiring medical marijuana from a qualifying patient or designated caregiver:
   a. A description of the medical marijuana acquired including the amount and strain,
   b. The name and registry identification number of the qualifying patient or designated caregiver who provided the medical marijuana,
   c. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent receiving the medical marijuana on behalf of the dispensary, and
   d. The date of acquisition;
3. For acquiring medical marijuana or a marijuana product from another dispensary or a marijuana establishment:
   a. A description of the medical marijuana or marijuana product acquired including:
      i. The amount, batch number, and strain of the medical marijuana or marijuana product;
      ii. For a marijuana product, the ingredients in order of abundance; and
      iii. For an edible marijuana product infused with medical marijuana or a marijuana product:
         (1) The date of manufacture,
         (2) The total weight of the edible marijuana product, and
         (3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible marijuana product;
   b. As applicable, either:
      i. The name and registry identification number of the dispensary providing the medical marijuana or marijuana product, or
      ii. The name and license number of the marijuana establishment providing the medical marijuana or marijuana product;
   c. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent providing the medical marijuana or marijuana product;
   d. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent receiving the medical marijuana or marijuana product on behalf of the dispensary; and
   e. The date of acquisition;
4. For each batch of marijuana cultivated:
   a. The batch number;
   b. Whether the batch originated from marijuana seeds or marijuana cuttings;
   c. The origin and strain of the marijuana seeds or marijuana cuttings planted;
   d. The number of marijuana seeds or marijuana cuttings planted;
   e. The date the marijuana seeds or cuttings were planted;
   f. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers used in the cultivation;
   g. The number of plants grown to maturity; and
   h. Harvest information including:
      i. Date of harvest,
      ii. Final processed usable marijuana yield weight, and
      iii. Name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent responsible for the harvest;
5. For providing medical marijuana or a marijuana product to another dispensary or a marijuana establishment:
   a. A description of the medical marijuana or marijuana product provided including:
      i. The amount, batch number, and strain of the medical marijuana or marijuana product;
      ii. For a marijuana product, the ingredients in order of abundance; and

iii. For an edible marijuana product infused with medical marijuana or a marijuana product:
(1) The date of manufacture,
(2) The total weight of the edible marijuana product, and
(3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible marijuana product;
b. The name and registry identification number or marijuana establishment license number, as applicable, of the other dispensary or the marijuana establishment;
c. The name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent who received the medical marijuana or marijuana product on behalf of the other dispensary or the marijuana establishment; and
d. The date the medical marijuana or marijuana product was provided;
6. For submitting marijuana or marijuana products to a laboratory agent or laboratory for testing:
a. The amount, strain, and batch number of the marijuana or marijuana product submitted;
b. The name and registry identification number of the laboratory;
c. The name and registry identification number of the laboratory agent who received the marijuana or marijuana product on behalf of the laboratory; and
d. The date the marijuana or marijuana product was submitted to the laboratory; and
7. For disposal of medical marijuana or a marijuana product that is not to be dispensed or used for making a marijuana product:
a. Description of and reason for the medical marijuana or marijuana product being disposed of including, if applicable:
i. The number of failed or other unusable plants, and
ii. The results of laboratory testing;
b. Date of disposal;
c. Method of disposal; and
d. Name and registry identification number or license number, as applicable, of the dispensary agent or marijuana facility agent responsible for the disposal.

D. The individual designated in subsection (A) shall conduct and document an audit of the dispensary's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
1. If the audit identifies a reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory not due to documented causes, the dispensary shall determine and document where the loss has occurred and take and document corrective action.
2. If the reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory is due to suspected criminal activity by a dispensary agent or marijuana facility agent, the dispensary shall report the dispensary agent or marijuana facility agent to the Department and to the local law enforcement authorities.

E. A dispensary shall:
1. Maintain the documentation required in subsections (C) and (D) at the dispensary for at least five years after the date on the document, and
2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-317. Product Labeling

A. A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is labeled with:
1. The dispensary's registry identification number;
2. The amount, strain, and batch number of the medical marijuana or marijuana product;
3. The form of the medical marijuana or marijuana product;
4. As applicable, the weight of the medical marijuana or marijuana product;
5. In compliance with Table 3.1 Analytes
, the potency of the medical marijuana or marijuana product, based on laboratory testing results, including the number of milligrams per designated unit or percentage of:
a. Total tetrahydrocannabinol, reported according to R9-17-404.03(S)(2)(a);
b. Total cannabidiol, reported according to R9-17-404.03(S)(2)(b); and
c. Any other cannabinoid for which the dispensary is making a claim related to the effect of the cannabinoid on the human body;
6. The following statement: "ARIZONA DEPARTMENT OF HEALTH SERVICES' WARNING: Marijuana use can be addictive and can impair an individual's ability to drive a motor vehicle or operate heavy machinery. Marijuana smoke contains carcinogens and can lead to an increased risk for cancer, tachycardia, hypertension, heart attack, and lung infection. KEEP OUT OF REACH OF CHILDREN";
7. If not cultivated by the dispensary, whether the medical marijuana was obtained from a qualifying patient, a designated caregiver, or another dispensary;
8. If not infused or prepared for sale by the dispensary, whether the marijuana product was obtained from another dispensary;
9. For a marijuana product:
a. The ingredients in order of abundance; and
b. If the marijuana product contains ethanol, the percentage of ethanol in the marijuana product;
10. The date of manufacture, harvest, or sale; and
11. The registry identification number of the qualifying patient.

B. If a dispensary provides medical marijuana cultivated, or a marijuana product infused or prepared for sale, by the dispensary to another dispensary, the dispensary shall ensure that:
1. The medical marijuana or marijuana product is labeled with:
a. The dispensary's registry identification number;
b. The amount, strain, and batch number of the medical marijuana or marijuana product; and
c. The date of harvest or sale; and
2. A copy of laboratory testing results for the medical marijuana or marijuana product is provided to the receiving dispensary.

C. A dispensary shall ensure that medical marijuana or a marijuana product being submitted to a laboratory for testing is labeled according to requirements in R9-17-317.01(B)(5).

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020; amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-317.01. Analysis of Medical Marijuana or a Marijuana Product

A. Before offering a batch of medical marijuana or of a marijuana product for sale or dispensing to a qualifying patient or designated caregiver, a dispensary shall ensure that:
1. Except as provided in subsection (A)(2) or (3), each batch of medical marijuana or marijuana product is tested in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1;
2. Each batch of a marijuana product is tested according to requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 for, as applicable:
   a. At least potency and microbial contaminants other than mycotoxins if the marijuana product was prepared from another marijuana product, such as a concentrate or tincture, that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, using none of the following:
      i. A temperature above which any analyte could chemically decompose or react with a component of the marijuana product;
      ii. A pressure above which any analyte could chemically decompose or react with a component of the marijuana product;
      iii. A process by which any analyte in the marijuana product that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 may be further concentrated; or
      iv. A solvent other than water; or
   b. All analytes except ethanol if the marijuana product is intended to contain ethanol; and
3. If the results of testing of the dispensary's medical marijuana and marijuana products for heavy metals, according to R9-17-404.03, indicate that the medical marijuana and marijuana products are in compliance with Table 3.1 for a period of at least six consecutive months:
   a. Each batch of medical marijuana or a marijuana product is tested according to requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 for all analytes except heavy metals; and
   b. At least once every three months, each batch of medical marijuana or a marijuana product is tested according to requirements in R9-17-404.03 and Table 3.1 for heavy metals.

B. A dispensary shall ensure that:
1. Until laboratory testing has been completed and testing results received by the dispensary that comply with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, a batch of marijuana or of a marijuana product is stored in a location away from medical marijuana and marijuana products offered for dispensing;
2. Except as provided in subsection (D), only one sample of each batch of medical marijuana or marijuana product is collected according to ANSI/ASQ Standard Z1.4 (2018), General Inspection Level II, incorporated by reference, including no future editions, and available at https://asq.org/quality-resources/z14-z19, including:
   a. Use, as applicable, of one of the following sampling methods:
      i. Top, middle, and bottom sampling using a sample thief, a device consisting of two nested tubes with one or more aligned slots through which a sample may be collected and then sealed into the inner tube by rotating the outer tube;
      ii. Star pattern sampling from the top, middle, and bottom of each storage container;
      iii. Collecting discrete incremental units of a batch, such as every tenth unit or every twentieth drop; or
      iv. Quartering until the sample reaches the size specified in subsection (B)(3); and
   b. For sampling methods specified in subsections (B)(2)(a)(i) through (iii), quartering the volume of the aggregated portions collected to obtain the sample size specified in subsection (B)(3);
3. The size of the sample provided to a laboratory is sufficient for testing and, if necessary, retesting;
4. Each sample in subsection (B)(3) is packaged in a container made of:
   a. The same material that would be used for dispensing, or
   b. Another material that will not react with or leach into the sample;
5. Each packaged sample is labeled with the:
   a. The dispensary's registry identification number;
   b. The amount, strain, and batch number of the medical marijuana or marijuana product;
   c. The storage temperature for the medical marijuana or marijuana product; and
   d. The date of sampling;
6. A packaged sample in subsection (B)(4) is submitted to a laboratory that:
   a. Has a laboratory registration certificate issued by the Department, and
   b. Is approved for testing by the Department for an analyte for which testing is being requested;
7. Except as specified in subsections (A)(2) and (C)(1) or (3)(b), as applicable, the samples in subsection (B)(4) are tested for each analyte specified in Table 3.1 by a laboratory that is approved by the Department for testing the analyte;
8. Only batches of marijuana or marijuana products for which laboratory testing results in subsection (B)(7) are in compliance with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 are offered for sale or dispensing; and
9. Except as provided in subsection (C), any batch of marijuana or marijuana product that does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 is remediated, if applicable, or destroyed according to policies and procedures.

C. If a dispensary receives a final report of testing, specified in R9-17-404.06(B)(3), from a laboratory that indicates that a batch of medical marijuana or marijuana product does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, the dispensary:
1. Within seven days after receiving the final report of testing, may request retesting of the remaining portion of the sample in subsection (B)(4) for all analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 by a second, independent laboratory that is approved by the Department for testing the analytes;
2. If the final report of testing from the second, independent laboratory indicates that any analyte tested for according to subsection (C)(1) does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, shall remediate, if applicable, or destroy the batch of medical marijuana or marijuana product according to policies and procedures;
3. If the final report of testing from the second, independent laboratory indicates that all analytes tested for according to subsection (C)(1) comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1:
   a. Shall ensure that the batch of medical marijuana or marijuana product is not offered for sale or dispensing; and

b. May request retesting of the remaining portion of the sample in subsection (B)(4) for the analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 by a third, independent laboratory that is approved by the Department for testing the analytes; and

4. If the dispensary requested retesting of the remaining portion of the sample in subsection (B)(4) for an analyte by a third, independent laboratory according to subsection (C)(3)(b):
   a. If the final report of testing from the third, independent laboratory indicates that the analyte tested for according to subsection (C)(3) complies with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, may offer the batch of medical marijuana or marijuana product for sale or dispensing; and
   b. If the final report of testing from the third, independent laboratory indicates that an analyte tested for according to subsection (C)(3) does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1, shall remediate, if applicable, or destroy the batch of medical marijuana or marijuana product according to policies and procedures.

D. A dispensary may request retesting of a batch of medical marijuana or marijuana product using a second sample if:
1. The batch of marijuana or marijuana product is still in the possession of the dispensary;
2. The dispensary receives notification from the Department or another dispensary that indicates that the final report of testing from a laboratory, specified in R9-17-404.06(B)(3), for the batch of medical marijuana or marijuana product may be inaccurate;
3. The dispensary:
   a. Collects the second sample according to subsections (B)(2) and (3);
   b. Packages and labels the sample according to subsections (B)(4) and (5); and
   c. Submits the sample to a second, independent laboratory that is approved by the Department for testing the analytes; and
4. The dispensary follows the requirements in subsections (C)(2) through (4) in determining whether the batch of medical marijuana or marijuana product:
   a. May be offered for sale or dispensing, or
   b. Is required to be remediated, if applicable, or destroyed.

E. A dispensary shall ensure that remediation of a batch of marijuana or of a marijuana product that has undergone laboratory testing and does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1:
1. Is performed according to policies and procedures,
2. Uses a method that is appropriate to address an analyte not in compliance with Table 3.1, and
3. Does not introduce or produce a substance in a concentration that is known to be harmful to humans.

F. If a batch of medical marijuana or a marijuana product is remediated, a dispensary shall submit samples from the remediated batch for laboratory testing according to subsection (B).

G. A dispensary shall provide to the Department upon request a sample of the dispensary's inventory of medical marijuana or a marijuana product of sufficient quantity to enable the Department to conduct an analysis of the medical marijuana or marijuana product.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020; amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

Table 3.1. Analytes

Key:
CAS Number = Chemical Abstract Services Registry number
CFU = Colony-forming unit, a method to estimate the number of viable bacteria or fungal cells in a sample
* = Required for marijuana products only

A. Microbial Contaminants

Analyte	Maximum Allowable Contaminants	Required Action
Escherichia coli	100 CFU/g	Remediate and retest, or Destroy
Salmonella spp.	Detectable in 1 gram	Destroy
Aspergillus flavus *Aspergillus fumigatus* *Aspergillus niger* *Aspergillus terreus*	Inhalable: Detectable in 1 gram	Remediate and retest, Remediate and use for preparing an extract or a concentrate, or Destroy
*Mycotoxins: Aflatoxin B1, B2, G1, and G2 Ochratoxin A	Marijuana product, except a marijuana product intended for topical application, prepared from an extract or concentrate of medical marijuana: 20 µg/kg (ppb) of total aflatoxins 20 µg/kg (ppb) of ochratoxin	Destroy

B. Heavy Metals

Analyte	Maximum Allowable Concentration	Required Action
Arsenic	0.4 ppm	Remediate and retest, or Destroy
Cadmium	0.4 ppm	
Lead	1.0 ppm	
Mercury	1.2 ppm	

C. *Residual Solvents

Analyte	CAS Number	Maximum Allowable Concentration	Required Action
Acetone	67-64-1	1,000 ppm	Remediate and retest, or Destroy
Acetonitrile	75-05-8	410 ppm	
Benzene	71-43-2	2 ppm	

Butanes (measured as the cumulative residue of n-butane and iso-butane)	106-97-8 and 75-28-5, respectively	5,000 ppm	
Chloroform	67-66-3	60 ppm	
Dichloromethane	75-09-2	600 ppm	
Ethanol	64-17-5	5,000 ppm	
Ethyl Acetate	141-78-6	5,000 ppm	
Ethyl Ether	60-29-7	5,000 ppm	
Heptane	142-82-5	5,000 ppm	
Hexanes (measured as the cumulative residue of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	110-54-3, 107-83-5, 96-14-0, 75-83-2, and 79-29-8, respectively	290 ppm	
Isopropyl Acetate	108-21-4	5,000 ppm	
Methanol	67-56-1	3,000 ppm	
Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neo-pentane)	109-66-0, 78-78-4, and 463-82-1, respectively	5,000 ppm	
2-Propanol (IPA)	67-63-0	5,000 ppm	
Propane	74-98-6	5,000 ppm	
Toluene	108-88-3	890 ppm	
Xylenes (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethyl benzene)	1330-20-7 (95-47-6, 108-38-3, and 106-42-3, respectively, and 100-41-4)	2,170 ppm	

D. Pesticides, Fungicides, Growth Regulators

Analyte	CAS Number	Maximum Allowable Concentration	Required Action
*Abamectin	71751-41-2	0.5 ppm	Remediate and retest, or
Acephate	30560-19-1	0.4 ppm	Destroy
Acequinocyl	57960-19-7	2.0 ppm	
Acetamiprid	135410-20-7	0.2 ppm	
Aldicarb	116-06-3	0.4 ppm	
Azoxystrobin	131860-33-8	0.2 ppm	
*Bifenazate	149877-41-8	0.2 ppm	
Bifenthrin	82657-04-3	0.2 ppm	
Boscalid	188425-85-6	0.4 ppm	
Carbaryl	63-25-2	0.2 ppm	
Carbofuran	1563-66-2	0.2 ppm	
*Chlorantraniliprole	500008-45-7	0.2 ppm	
*Chlorfenapyr	122453-73-0	1.0 ppm	
Chlorpyrifos	2921-88-2	0.2 ppm	
*Clofentezine	74115-24-5	0.2 ppm	
*Cyfluthrin	68359-37-5	1.0 ppm	
*Cypermethrin	52315-07-8	1.0 ppm	
*Daminozide	1596-84-5	1.0 ppm	
*DDVP (Dichlorvos)	62-73-7	0.1 ppm	
Diazinon	333-41-5	0.2 ppm	
Dimethoate	60-51-5	0.2 ppm	
Ethoprophos	13194-48-4	0.2 ppm	
Etofenprox	80844-07-1	0.4 ppm	
Etoxazole	153233-91-1	0.2 ppm	
Fenoxycarb	72490-01-8	0.2 ppm	
Fenpyroximate	134098-61-6	0.4 ppm	
*Fipronil	120068-37-3	0.4 ppm	
Flonicamid	158062-67-0	1.0 ppm	
Fludioxonil	131341-86-1	0.4 ppm	
Hexythiazox	78587-05-0	1.0 ppm	
Imazalil	35554-44-0	0.2 ppm	
Imidacloprid	138261-41-3	0.4 ppm	
Kresoxim-methyl	143390-89-0	0.4 ppm	
Malathion	121-75-5	0.2 ppm	
Metalaxyl	57837-19-1	0.2 ppm	
Methiocarb	2032-65-7	0.2 ppm	
Methomyl	16752-77-5	0.4 ppm	
Myclobutanil	88671-89-0	0.2 ppm	
Naled	300-76-5	0.5 ppm	
Oxamyl	23135-22-0	1.0 ppm	
*Paclobutrazol	76738-62-0	0.4 ppm	

*Permethrins (measured as the cumulative residue of cis- and trans- isomers)	52645-53-1 (54774-45-7 and 51877-74-8)	0.2 ppm
*Phosmet	732-11-6	0.2 ppm
Piperonyl butoxide	51-03-6	2.0 ppm
*Prallethrin	23031-36-9	0.2 ppm
Propiconazole	60207-90-1	0.4 ppm
Propoxur	114-26-1	0.2 ppm
*Pyrethrins (measured as the cumulative residue of pyrethrin 1, cinerin 1 and jasmolin 1)	8003-34-7 (121-21-1, 25402-06-6, and 4466-14-2)	1.0 ppm
*Pyridaben	96489-71-3	0.2 ppm
*Spinosad	168316-95-8	0.2 ppm
Spiromesifen	283594-90-1	0.2 ppm
Spirotetramat	203313-25-1	0.2 ppm
Spiroxamine	118134-30-8	0.4 ppm
Tebuconazole	107534-96-3	0.4 ppm
Thiacloprid	111988-49-9	0.2 ppm
Thiamethoxam	153719-23-4	0.2 ppm
Trifloxystrobin	141517-21-7	0.2 ppm

E. Potency

Analyte	Labelling	Required Action
Tetrahydrocannabinolic acid (THC-A)	Label claim is not within +/- 20% of tested value	Revise label as necessary
Delta-9-tetrahydrocannabinol (Δ9-THC)		
Cannabidiolic acid (CBD-A)		
Cannabidiol (CBD)		

Historical Note
New Table 3.1 Analytes

made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2848, with an immediate effective date of October 15, 2020; amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020 (Supp. 20-4). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-318. Security

A. Except as provided in R9-17-310(A)(7) or R9-17-324(C), a dispensary shall ensure that access into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, manufactured, or stored is limited to the dispensary's principal officers, board members, and authorized dispensary agents.

B. A dispensary agent may transport marijuana, marijuana plants, marijuana products, and marijuana paraphernalia between the dispensary and:
1. The dispensary's cultivation site,
2. A qualifying patient,
3. Another dispensary, and
4. A laboratory that has a laboratory registration certificate issued by the Department.

C. Before transportation, a dispensary agent shall:
1. Complete a trip plan that includes:
   a. The name of the dispensary agent in charge of transporting the marijuana;
   b. The date and start time of the trip;
   c. A description of the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia being transported;
   d. Any anticipated stops during the trip, including the locations of the stop and arrival and departure time from the location; and
   e. The anticipated route of transportation; and
2. Provide a copy of the trip plan in subsection (C)(1) to the dispensary.

D. During transportation, a dispensary agent shall:
1. Carry a copy of the trip plan in subsection (C)(1) with the dispensary agent for the duration of the trip;
2. Use a vehicle without any medical marijuana identification;
3. Have a means of communication with the dispensary; and
4. Ensure that the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia are not visible.

E. After transportation, a dispensary agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).

F. A dispensary shall:
1. Maintain the documents required in subsection (C)(2) and (E) for at least two years after the date of the documentation;
2. If transporting a sample to a laboratory for testing, provide a copy of the trip plan to the laboratory; and
3. Provide a copy of the documents required in subsection (C)(2) and (E) to the Department for review upon request.

G. To prevent unauthorized access to medical marijuana at the dispensary and, if applicable, the dispensary's cultivation site, the dispensary shall have the following:
1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:
   a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device;
   b. Exterior lighting to facilitate surveillance;

c. Electronic monitoring including:
i. At least one 19-inch or greater call-up monitor;
ii. A printer capable of immediately producing a clear still photo from any video camera image;
iii. Video cameras:
(1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building; and
(2) Having a recording resolution of at least 704 x 480 or the equivalent;
iv. A video camera at each point of sale location allowing for the identification of any qualifying patient or designated caregiver purchasing medical marijuana;
v. A video camera in each grow room capable of identifying any activity occurring within the grow room in low light conditions;
vi. Storage of video recordings from the video cameras for at least 30 calendar days;
vii. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
viii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and
d. Panic buttons in the interior of each building; and
2. Policies and procedures:
a. That restrict access to the areas of the dispensary that contain marijuana and, if applicable, the dispensary's cultivation site to authorized individuals only;
b. That provide for the identification of authorized individuals;
c. That prevent loitering;
d. For conducting electronic monitoring; and
e. For the use of a panic button.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-319. Edible Food Products

A. A dispensary that prepares, sells, or dispenses marijuana-infused edible food products shall:
1. Before preparing marijuana-infused edible food products, obtain a license or permit of the location as a food establishment, issued under 9 A.A.C. 8, Article 1, to prepare marijuana-infused edible food products;
2. If the dispensary prepares the marijuana-infused edible food products, ensure that the marijuana-infused edible food products are prepared according to the applicable requirements in 9 A.A.C. 8, Article 1;
3. If the marijuana-infused edible food products are not prepared at the dispensary, obtain and maintain at the dispensary a copy of the current license or permit as a food establishment, issued under 9 A.A.C. 8, Article 1, to prepare marijuana-infused edible food products from the dispensary or marijuana establishment that prepares the marijuana-infused edible products;
4. Before selling or dispensing marijuana-infused edible food products, obtain a license or permit of the location as a food establishment, issued under 9 A.A.C. 8, Article 1, to sell or dispense marijuana-infused edible food products that are either:
a. A time/temperature control for safety food, or
b. Not prepared in individually packaged containers; and
5. If a dispensary sells or dispenses marijuana-infused edible food products, ensure that the marijuana-infused edible food products are sold or dispensed according to applicable requirements in 9 A.A.C. 8, Article 1.

B. A dispensary is responsible for the content and quality of any edible food product sold or dispensed by the dispensary.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-320. Cleaning and Sanitation

A. A dispensary shall ensure that:
1. Any building or equipment used by a dispensary for the cultivation, harvest, preparation, packaging, storage, infusion, or sale of medical marijuana or marijuana products is maintained in a clean and sanitary condition;
2. Medical marijuana or marijuana products, in the process of production, preparation, manufacture, packing, storage, sale, distribution, or transportation, are protected from flies, dust, dirt, and all other contamination;
3. Refuse or waste products incident to the manufacture, preparation, packing, selling, distributing, or transportation of medical marijuana or marijuana products are removed from the building used as a dispensary and, if applicable, a building at the dispensary's cultivation site at least once every 24 hours or more often as necessary to maintain a clean condition;
4. All trucks, trays, buckets, other receptacles, platforms, racks, tables, shelves, knives, saws, cleavers, other utensils, or the machinery used in moving, handling, cutting, chopping, mixing, canning, packaging, or other processes are cleaned daily;
5. Any equipment used in the preparation of marijuana products is clean, in good repair, and, if applicable, calibrated according to the manufacturer's recommendations;
6. Any supplies used in the preparation of marijuana products, including flammable or volatile chemicals, are stored in a manner to avoid a hazardous condition from occurring; and
7. All stored marijuana products are securely covered.

B. A dispensary shall ensure that a dispensary agent at the dispensary or the dispensary's cultivation site:
1. Cleans the dispensary agent's hands and exposed portions of the dispensary agent's arms in a hand washing sink:
a. Before preparing medical marijuana or marijuana products including working with food, equipment, and utensils;
b. During preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
c. After handling soiled equipment or utensils;
d. After touching bare human body parts other than the dispensary agent's clean hands and exposed portions of arms; and
e. After using the toilet room;
2. If working directly with the preparation of medical marijuana or the infusion of marijuana into non-edible products:

a. Keeps the dispensary agent's fingernails trimmed, filed, and maintained so that the edges and surfaces are cleanable;
b. Unless wearing intact gloves in good repair, does not have fingernail polish or artificial fingernails on the dispensary agent's fingernails; and
c. Wears protective apparel such as coats, aprons, gowns, or gloves to prevent contamination;

3. Wears clean clothing appropriate to assigned tasks;
4. Reports to the medical director any health condition experienced by the dispensary agent that may adversely affect the safety or quality of any medical marijuana or marijuana products with which the dispensary agent may come into contact; and
5. If the medical director determines that a dispensary agent has a health condition that may adversely affect the safety or quality of the medical marijuana or marijuana products, is prohibited from direct contact with any medical marijuana, marijuana products, or equipment or materials for processing medical marijuana or marijuana products until the medical director determines that the dispensary agent's health condition will not adversely affect the medical marijuana or marijuana products.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-321. Physical Plant

A. A dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed, as applicable:
1. Before the date the dispensary submitted the initial dispensary registration certificate application,
2. Before the date of an application to change the location of the dispensary, or
3. Before the date of an application to add a cultivation site.

B. A dispensary shall provide onsite parking or parking adjacent to the building used as the dispensary.

C. A building used as a dispensary or the location used as a dispensary's cultivation site shall have:
1. At least one toilet room;
2. Each toilet room shall contain:
   a. A flushable toilet;
   b. Mounted toilet tissue;
   c. A sink with running water;
   d. Soap contained in a dispenser; and
   e. Disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer;
3. At least one hand washing sink not located in a toilet room;
4. Designated storage areas for medical marijuana or materials used in direct contact with medical marijuana separate from storage areas for toxic or flammable materials; and
5. If preparation or packaging of medical marijuana is done in the building, a designated area for the preparation or packaging that:
   a. Includes work space that can be sanitized, and
   b. Is only used for the preparation or packaging of medical marijuana.

D. For each commercial device used at a dispensary or the dispensary's cultivation site, the dispensary shall:
1. Ensure that the commercial device is licensed or certified pursuant to A.R.S. § 41-2091,
2. Maintain documentation of the commercial device's license or certification, and
3. Provide a copy of the commercial device's license or certification to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

A. The Department shall deny an application for a dispensary registration certificate or a renewal if:
1. For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application, before the date of an application to change the location of the dispensary, or before the date of an application to add a cultivation site;
2. A principal officer or board member:
   a. Has been convicted of an excluded felony offense;
   b. Has served as a principal officer or board member for a dispensary or marijuana establishment that:
      i. Had the dispensary registration certificate or marijuana establishment license revoked, or
      ii. Did not obtain an approval to operate the dispensary or marijuana establishment, as applicable, within 18 months after the dispensary registration certificate or marijuana establishment license was issued;
   c. Is under 21 years of age; or
   d. Is a physician currently providing written certifications for medical marijuana for qualifying patients; or
3. The application or the dispensary does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter.

B. The Department may deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary provides false or misleading information to the Department.

C. The Department shall revoke a dispensary's registration certificate if:
1. The dispensary:
   a. Operates before obtaining approval to operate a dispensary from the Department;
   b. Diverts marijuana to a person other than:
      i. Another dispensary with a valid dispensary registration certificate issued by the Department,
      ii. A marijuana establishment with a valid marijuana establishment license issued under 9 A.A.C. 18;
      iii. A laboratory with a valid laboratory registration certificate issued by the Department,
      iv. A qualifying patient with a valid registry identification card issued by the Department,
      v. A designated caregiver with a valid registry identification card issued by the Department,
      vi. A dispensary agent with a valid registry identification card or marijuana facility agent with a valid marijuana facility agent license issued by the Department accepting the marijuana on behalf of a dispensary or marijuana establishment, or
      vii. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory;

c. Acquires usable marijuana or mature marijuana plants from any entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a marijuana establishment with a marijuana establishment license issued under 9 A.A.C. 18, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
d. Acquires a marijuana product from any person other than another dispensary with a valid dispensary registration certificate issued by the Department or a marijuana establishment with a marijuana establishment license issued under 9 A.A.C. 18; or

2. A principal officer or board member has been convicted of an excluded felony offense.

D. The Department may revoke a dispensary registration certificate if the dispensary does not:
1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
2. Implement the policies and procedures or comply with the statements provided to the Department with the dispensary's application.

E. If the Department denies a dispensary registration certificate application, the Department shall provide notice to the applicant that includes:
1. The specific reason or reasons for the denial, and
2. All other information required by A.R.S. § 41-1076.

F. If the Department revokes a dispensary registration certificate, the Department shall provide notice to the dispensary that includes:
1. The specific reason or reasons for the revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-323. Denial or Revocation of a Dispensary Agent's Registry Identification Card

A. The Department shall deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent:
1. Does not meet the definition "nonprofit medical marijuana dispensary agent" in A.R.S. § 36-2801;
2. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
3. Previously had a marijuana facility agent license revoked for not complying with A.R.S. Title 36, Chapter 28.2 or 9 A.A.C. 18.

B. The Department may deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent provides false or misleading information to the Department.

C. The Department shall revoke a dispensary agent's registry identification card if the dispensary agent:
1. Diverts medical marijuana to a person other than:
a. Another dispensary with a valid dispensary registration certificate issued by the Department,
b. A marijuana establishment with a valid marijuana establishment license issued under 9 A.A.C. 18;
c. A laboratory with a valid laboratory registration certificate issued by the Department,
d. A qualifying patient with a valid registry identification card issued by the Department,
e. A designated caregiver with a valid registry identification card issued by the Department,
f. A dispensary agent with a valid registry identification card or marijuana facility agent with a valid marijuana facility agent license issued by the Department accepting the marijuana on behalf of a dispensary or marijuana establishment, or
g. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory; or
2. Except as provided in A.R.S. § 36-2804.01(D), has been convicted of an excluded felony offense.

D. The Department may revoke a dispensary agent's registry identification card if the dispensary agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.

E. If the Department denies or revokes a dispensary agent's registry identification card, the Department shall provide notice to the dispensary agent and the dispensary agent's dispensary that includes:
1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

R9-17-324. Dual Licensees

A. If a dispensary is a dual licensee, the dispensary shall:
1. Provide marijuana and marijuana products, according to A.A.C. R9-18-309, to consumers, as defined in A.R.S. § 36-2850, at the same location as the dispensary dispenses medical marijuana and marijuana products to qualifying patients and designated caregivers;
2. Notify the Department within five calendar days after beginning to operate on a for-profit basis, as allowed by A.R.S. § 36-2858(D)(2), and, if applicable, provide to the Department the documents required in R9-17-304(C)(2) for the new organizational or corporate structure; and
3. Comply with the requirements in A.R.S. § 36-2858(D)(3).

B. If a dispensary is a dual licensee, the entity holding the valid dispensary registration certificate may:
1. Request that the dispensary's cultivation site, specified according to R9-17-305(A)(1)(e) or R9-17-307(A)(1), be transferred under the entity's marijuana establishment license according to A.A.C. R9-18-303(E)(3);
2. Request approval of a change in the location in subsection (A)(1) by complying with the requirements in both:
a. R9-17-307(A), and
b. A.A.C. R9-18-306; or
3. Transfer or assign both the dispensary registration certificate and the marijuana establishment license to the same entity.

C. A dispensary that is a dual licensee may allow an individual without a dispensary agent registry identification card or marijuana facility agent license into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, manufactured, or

stored if the individual:
1. Is not at the dispensary or the dispensary's cultivation site more than once per week; and
2. When at the dispensary or the dispensary's cultivation site, is supervised by a dispensary agent who has a valid registry identification card or an individual with a valid marijuana facility license associated with the dispensary.

D. A dispensary that is a dual licensee is exempt from the requirements in:
1. R9-17-310(A)(5), (12), and (13);
2. R9-17-313; and
3. R9-17-320(B)(4) and (5), but shall ensure that a dispensary agent or marijuana facility agent at the dispensary or the dispensary's cultivation site:
   a. Reports to a principal officer or board member of the dispensary any health condition experienced by the dispensary agent or marijuana facility agent that may adversely affect the safety or quality of any medical marijuana or marijuana products with which the dispensary agent or marijuana facility agent may come into contact; and
   b. If the principal officer or board member determines that a dispensary agent or marijuana facility agent has a health condition that may adversely affect the safety or quality of the medical marijuana or marijuana products, is prohibited from direct contact with any medical marijuana, marijuana products, or equipment or materials for processing medical marijuana or marijuana products until the principal officer or board member determines that the dispensary agent's or marijuana facility agent's health condition will not adversely affect the medical marijuana or marijuana products.

E. If the Department identifies an instance of noncompliance with a requirement of both this Chapter and 9 A.A.C. 18 during an inspection of a dual licensee, the Department shall note the instance of noncompliance on a notice of deficiencies associated with the dual licensee's marijuana establishment license under 9 A.A.C. 18, rather than on both the notice of deficiencies for the dispensary registration certificate and the notice of deficiencies for the marijuana establishment license.

Historical Note

New Section made by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by exempt rulemaking at 27 A.A.R. 1587, with an immediate effective date of September 7, 2021 (Supp. 21-3). Amended by final expedited rulemaking at 28 A.A.R. 2562 (September 30, 2022), with an immediate effective date of September 8, 2022 (Supp. 22-3).

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

R9-17-401. Owner

A. For the purposes of this Article the following individuals are considered owners:
1. If an individual is applying for a laboratory registration certificate, the individual;
2. If a corporation is applying for a laboratory registration certificate, two individuals who are officers of the corporation;
3. If a partnership is applying for a laboratory registration certificate, two of the individuals who are partners;
4. If a limited liability company is applying for a laboratory registration certificate, a manager or, if the limited liability company does not have a manager, an individual who is a member of the limited liability company;
5. If an association or cooperative is applying for a laboratory registration certificate, two individuals who are members of the governing board of the association or cooperative;
6. If a joint venture is applying for a laboratory registration certificate, two of the individuals who signed the joint venture agreement; and
7. If a business organization type other than those described in subsections (A)(2) through (6) is applying for a laboratory registration certificate, two individuals who are members of the business organization.

B. When a laboratory is required by this Chapter to provide information, sign documents, or ensure actions are taken, the individual or individuals in subsection (A) shall comply with the requirement on behalf of the laboratory.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-402. Applying for a Laboratory Registration Certificate

A. To apply for a laboratory registration certificate, an applicant shall submit to the Department the following:
1. An application in a Department-provided format that includes:
   a. The physical address of the laboratory;
   b. The distance to the closest private school or public school from the laboratory;
   c. The following information for the laboratory applying:
      i. The legal name of the laboratory,
      ii. Type of business organization,
      iii. Mailing address,
      iv. Telephone number, and
      v. E-mail address;
   d. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;
   e. The name, residence address, and date of birth of each owner;
   f. The identifying number on the applicable card or document in subsection (A)(4)(d)(i) through (v);
   g. The name, residence address, and date of birth of the technical laboratory director designated according to R9-17-404(3);
   h. The name, residence address, and date of birth of each laboratory agent other than an owner or the technical laboratory director, if applicable;
   i. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
   j. An attestation that the information provided to the Department to apply for a laboratory registration certificate is true and correct; and
   k. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. Policies and procedures that comply with the requirements in this Chapter that contain:
   a. Inventory control;
   b. A chain of custody and sample requirement process;
   c. A records retention process;
   d. A secure method to transfer the portion of a sample remaining after testing to another laboratory with an approval for testing issued by the Department:

i. For testing of parameters or analytes that the laboratory receiving the sample from a dispensary is not approved by the Department to conduct, or
ii. For retesting at the request of a dispensary according to R9-17-317.01(C);
e. Security;
f. A process to ensure marijuana or marijuana products testing results are accurate, precise, and scientifically valid before reporting the results; and
g. A process for disposal of marijuana or marijuana products that are submitted to the laboratory for testing;

3. If the applicant is one of the business organizations in R9-17-401(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:
a. The name of the business organization,
b. The type of business organization, and
c. The names and titles of the individuals in R9-17-401(A);
4. For each owner:
a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
b. An attestation signed and dated by the owner that the owner does not have a direct or indirect familial or financial relationship with or interest in a dispensary, related medical marijuana business entity, or management company;
c. An attestation signed and dated by the owner that the laboratory will not test marijuana or marijuana products for a designated caregiver who the owner has a direct or indirect familial or financial relationship with;
d. An attestation signed and dated by the owner pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
e. A copy the owner's:
i. Arizona driver's license issued on or after October 1, 1996;
ii. Arizona identification card issued on or after October 1, 1996;
iii. Arizona registry identification card;
iv. Photograph page in the owner's U.S. passport; or
v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the owner:
(1) Birth certificate verifying U.S. citizenship,
(2) U.S. Certificate of Naturalization, or
(3) U.S. Certificate of Citizenship; and
f. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
i. The owner's fingerprints on a fingerprint card that includes:
(1) The owner's first name; middle initial, if applicable; and last name;
(2) The owner's signature;
(3) If different from the owner, the signature of the individual physically rolling the owner's fingerprints;
(4) The owner's residence address;
(5) If applicable, the owner's surname before marriage and any names previously used by the owner;
(6) The owner's date of birth;
(7) The owner's Social Security number;
(8) The owner's citizenship status;
(9) The owner's gender;
(10) The owner's race;
(11) The owner's height;
(12) The owner's weight;
(13) The owner's hair color;
(14) The owner's eye color; and
(15) The owner's place of birth; or
ii. If the fingerprints and information required in subsection (A)(4)(f)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the owner as a result of the application;
5. If zoning restrictions have been enacted, a sworn statement signed and dated by the individual or individuals in R9-17-401(A) certifying that the laboratory is in compliance with any local zoning restrictions;
6. A copy of documentation issued by the local jurisdiction to the laboratory authorizing occupancy of the building as a laboratory, such as a certificate of occupancy, a special use permit, or a conditional use permit;
7. A site plan drawn to scale of the laboratory location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;
8. A building plan drawn to scale of the building where the laboratory is located showing the:
a. Layout and dimensions of each room;
b. Name and function of each room;
c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;
d. Location of each fire protection device;
e. Layout of heating, air conditioning, exhaust, and ventilation systems;
f. Location and layout of refrigerated rooms or freezer rooms;
g. Location of each sink, safety shower, other water supply, or plumbing fixture;
h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;
i. Location of security measures or equipment to protect from diversion of marijuana or marijuana products; and
j. Means of egress;
9. Documentation of accreditation of the location specified according to subsection (A)(1)(a) for which the applicant is applying for a laboratory registration certificate;
10. The laboratory's Transaction Privilege Tax Number issued by the Arizona Department of Revenue, if applicable; and
11. The applicable fee in R9-17-102 for applying for a laboratory registration certificate.

B. Within 72 hours after an owner receives a laboratory registration certificate pursuant to an application submitted according to subsection (A), the owner shall apply for a laboratory agent registry identification card, according to R9-17-405, for each laboratory agent, including a technical laboratory director.

C. A change in location of the laboratory's physical address or ownership requires a new application to be submitted according to subsection (A).

D. A separate laboratory registration certificate is required for each noncontiguous portion of a laboratory.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-402.01. Applying for Approval for Testing

To apply for approval for testing, an applicant shall submit to the Department, at least 60 calendar days before the expiration of the initial laboratory registration certificate for the laboratory, the following:

1. An application in a Department-provided format that includes:
   a. The name and registry identification number of the laboratory;
   b. The physical address of the laboratory;
   c. The name of the applicant;
   d. The name of the technical laboratory director designated according to R9-17-404(3);
   e. For each parameter for which approval for testing is being requested:
      i. The analyte to be tested for,
      ii. The instruments and equipment to be used for testing, and
      iii. The software to be used at the laboratory for instrument control and data reduction interpretation;
   f. The laboratory's proposed hours of operation;
   g. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
   h. Whether the laboratory is ready for an inspection by the Department;
   i. If the laboratory is not ready for an inspection by the Department, the date the laboratory will be ready for an inspection by the Department;
   j. An attestation that the information provided to the Department to apply for approval for testing is true and correct; and
   k. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. For each parameter and analyte listed according to subsection (1)(e):
   a. The limit of quantitation;
   b. A copy of a proficiency testing report, if applicable, or accuracy testing documentation; and
   c. A copy of the standard operating procedure;
3. Policies and procedures that comply with the requirements in this Chapter that include:
   a. A quality assurance program and standards, and
   b. A process to compile testing results into a single laboratory report to be provided to a dispensary; and
4. If different from the building plan submitted according to R9-17-402(A)(8), a building plan drawn to scale of the building where the laboratory is located showing the:
   a. Layout and dimensions of each room;
   b. Name and function of each room;
   c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;
   d. Location of each fire protection device;
   e. Layout of heating, air conditioning, exhaust, and ventilation systems;
   f. Location and layout of refrigerated rooms or freezer rooms;
   g. Location of each sink, safety shower, other water supply, or plumbing fixture;
   h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;
   i. Location of security equipment to protect from diversion of marijuana or marijuana products; and
   j. Means of egress.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-403. Renewing a Laboratory Registration Certificate

To renew a laboratory registration certificate, an applicant shall submit to the Department, at least 30 calendar days before the expiration date of the current laboratory registration certificate, but no more than 90 days before the expiration date of the current laboratory registration certificate, the following:

1. An application in a Department-provided format that includes:
   a. The physical address of the laboratory;
   b. The following information for the laboratory:
      i. The legal name of the laboratory,
      ii. The registry identification number for the laboratory,
      iii. Type of business organization,
      iv. Mailing address,
      v. Telephone number, and
      vi. E-mail address;
   c. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;
   d. The name, residence address, and date of birth of each owner;
   e. The name, residence address, and date of birth of the technical laboratory director designated according to R9-17-404(3);
   f. The name, residence address, and date of birth of each laboratory agent, if applicable;
   g. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
   h. An attestation that the information provided to the Department to renew the laboratory registration certificate is true and correct; and

i. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;

2. For each owner:
   a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
   b. An attestation signed and dated by the owner that the laboratory will not test medical marijuana and medical marijuana products for:
      i. A dispensary, related medical marijuana business entity, or management company that the owner has a direct or indirect familial or financial relationship with or interest in; or
      ii. A designated caregiver who the owner has a direct or indirect familial or financial relationship with;
3. For each current parameter and analyte, documentation of current accreditation;
4. If a change has been made to the standard operating procedure for a current parameter, a copy of the revised standard operating procedure;
5. If a change has been made in the quality assurance plan for a current parameter required in R9-17-404.03 or R9-17-404.04, a copy of the revised quality assurance plan; and
6. The applicable fee in R9-17-102 for applying to renew a laboratory registration certificate.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-404. Administration

An owner of a laboratory with a laboratory registration certificate shall:

1. Comply with the:
   a. Quality assurance requirements in R9-17-404.05,
   b. Operation requirements in R9-17-404.06, and
   c. Laboratory records and reports requirements in R9-17-404;
2. Maintain accreditation for each approved parameter and analyte;
3. Designate in writing a technical laboratory director who:
   a. Has knowledge and experience in overseeing a laboratory as documented by:
      i. A doctoral degree in chemistry, biochemistry, microbiology, or a similar laboratory science;
      ii. A master's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and at least two years of experience working in a laboratory and providing laboratory testing; or
      iii. A bachelor's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and at least four years of experience working in a laboratory and providing laboratory testing; and
   b. Is responsible for:
      i. Ensuring that all services and tests provided by the laboratory are performed in compliance with the requirements in this Article;
      ii. Directing and supervising services and tests provided by the laboratory;
      iii. Overseeing the work of all personnel in the laboratory;
      iv. Providing ongoing training to laboratory agents, as applicable to the functions performed by a laboratory agent; and
      v. Ensuring safety and hazardous substance control in the laboratory;
4. Notify the Department in writing within 20 business working days after any change in the technical laboratory director, providing the name and contact information for the new technical laboratory director;
5. Develop, document, and implement policies and procedures regarding:
   a. Job descriptions and employment contracts, including:
      i. Personnel duties, authority, responsibilities, and qualifications;
      ii. Personnel supervision;
      iii. Ongoing training, applicable to the functions performed by a laboratory agent;
      iv. Training in and adherence to confidentiality requirements;
      v. Periodic performance evaluations, including proficiency testing or accuracy testing, as applicable, on a rotating basis among all laboratory agents performing similar functions; and
      vi. Disciplinary actions;
   b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
   c. Inventory control, including:
      i. Tracking;
      ii. Accepting medical marijuana or marijuana products for testing;
      iii. Transferring a portion of a sample to another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct;
      iv. Testing medical marijuana and marijuana products;
      v. Providing the remaining sample of tested medical marijuana or a marijuana product to another laboratory with an approval for testing issued by the Department at the request of a dispensary according to R9-17-317.01(C);
      vi. Retaining the residual portion of a sample accepted for testing from a dispensary for at least 14 days after sending the final report of testing required in R9-17-404.06(B)(3) to the dispensary; and
      vii. Disposing of medical marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting:
         (1) The method of disposal;
         (2) Whether the medical marijuana or marijuana product was tested;
         (3) If not tested, the reason for not testing;
         (4) The laboratory agent overseeing the disposal; and
         (5) The date of disposal;
   d. Standard operating procedures, including:
      i. The review and updating of standard operating procedures;

ii. Requirements for a laboratory agent to review current, new, or updated standard operating procedures applicable to the functions performed by the laboratory agent; and
iii. Documenting the review of standard operating procedures by applicable laboratory agents;

e. Laboratory records, including:
i. Maintenance and monitoring of instruments and equipment;
ii. Acceptance of medical marijuana and marijuana products for testing;
iii. The chain of custody for a sample accepted by the laboratory for testing;
iv. The storage of a submitted sample prior to testing to maintain the integrity of the sample and analyte;
v. The process for selecting a homogeneous portion of a submitted sample for testing;
vi. Ensuring testing results are accurate, precise, and scientifically valid before reporting the results;
vii. Reporting of testing results, including:
(1) Testing results obtained from another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct, or
(2) Testing results provided to another laboratory from which the laboratory had received a portion of a sample for testing of parameters or analytes that the other laboratory is not approved by the Department to conduct;
viii. If applicable, transfer of a portion of a sample to another laboratory with an approval for testing issued by the Department for testing of parameters or analytes that the laboratory is not approved by the Department to conduct, including:
(1) The name and registry identification number of the dispensary from which the sample was obtained,
(2) The name and registry identification number of the laboratory to which the portion of the sample is being transferred,
(3) The date of the transfer,
(4) The amount of sample being transferred,
(5) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the other laboratory;
(6) The parameters or analytes being tested by the other laboratory, and
(7) The testing results obtained from the other laboratory;
ix. If applicable, transfer of the portion of a sample remaining after testing to another laboratory with an approval for testing issued by the Department at the request of a dispensary according to R9-17-317.01(C), including:
(1) The name and registry identification number of the dispensary,
(2) The name and registry identification number of the dispensary agent requesting the transfer on behalf of the dispensary,
(3) The date of the request,
(4) The amount of sample being transferred,
(5) The name and registry identification number of the other laboratory, and
(6) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the other laboratory;
x. Confidentiality; and
xi. Retention;

f. A quality assurance program and standards;
g. A records retention process; and
h. Security;

6. Review and document the review of laboratory policies and procedures at least once every 12 months after the issue date of the laboratory registration certificate and update as needed;
7. Ensure that each laboratory agent has the laboratory agent's registry identification card in the laboratory agent's immediate possession when the laboratory agent is working or providing volunteer services related to marijuana or marijuana products testing at the laboratory;
8. Ensure that a laboratory agent accompanies any individual other than another laboratory agent associated with the laboratory when the individual is present in the area of the laboratory where marijuana or marijuana products are being tested or stored for testing;
9. Not allow an individual who does not possess a laboratory agent registry identification card issued under the laboratory registration certificate to:
a. Serve as an owner for the laboratory,
b. Be employed by the laboratory, or
c. Provide volunteer services at or on behalf of the laboratory;
10. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a laboratory agent no longer:
a. Serves as an owner for the laboratory,
b. Is employed by the laboratory, or
c. Provides volunteer services at or on behalf of the laboratory; and
11. Unless otherwise specified, maintain copies of any documentation required in this Chapter for at least two years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.01. Compliance Monitoring

A. Submission of an application for a laboratory registration certificate constitutes permission for:
1. The Department's entry to and inspection of the laboratory, and
2. The Department to conduct proficiency testing according to R9-17-404.02.

B. The Department shall conduct:
1. An initial laboratory inspection; and
2. A follow-up laboratory inspection, at least annually.

C. The Department shall comply with A.R.S. § 41-1009 in conducting a laboratory inspection or investigation.

D. The Department shall not accept allegations of a laboratory's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.

E. If the Department receives an allegation of a laboratory's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the laboratory.

F. If the Department determines that a laboratory is not in compliance with the requirements of A.R.S. Title 36, Chapter 28.1, or this Chapter, the Department:

1. Shall provide the owner, according to R9-17-401(A), and technical laboratory director with a written notice that includes the specific rule or statute that was violated; and
2. May:
   a. Take an enforcement action as described in R9-17-410; or
   b. Require that the technical laboratory director submit to the Department, within 30 calendar days after written notice from the Department, a corrective action plan to address issues of compliance that do not directly affect the health or safety of a qualifying patient or laboratory agent that:
      i. Describes how each identified instance of noncompliance will be corrected and reoccurrence prevented, and
      ii. Includes a date for correcting each instance of noncompliance that is appropriate to the actions necessary to correct the instance of noncompliance.

G. Under A.R.S. § 41-1009(G) and (I), the Department's decision regarding whether a technical laboratory director may submit a corrective action plan on behalf of a laboratory or whether a deficiency has been corrected or has been corrected within a reasonable period of time is not an appealable agency action as defined by A.R.S. § 41-1092.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2).

R9-17-404.02. Proficiency Testing; Accuracy Testing

A. At least once in each 12-month period, and more often if requested by the Department, a technical laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in proficiency testing provided by the Department or a proficiency testing service that:

1. Includes at least one proficiency testing sample for each parameter and analyte for which the laboratory has been approved or is requesting approval and for which proficiency testing samples are available;
2. Demonstrates the laboratory agent's competence in testing for the parameter; and
3. If the laboratory has been approved or has requested approval to test an analyte by different methods, may use the same proficiency testing sample for each method.

B. If a proficiency testing sample is not available for a specific parameter and analyte, a technical laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in accuracy testing for the parameter.

C. To demonstrate competence in testing for a parameter, testing results reported for the parameter shall be within acceptance limits established by the Department, according to R9-17-404.03 or R9-17-404.04, or the proficiency testing service, as applicable.

D. A technical laboratory director shall ensure that:

1. Each sample for proficiency testing accepted at the laboratory is analyzed at the laboratory;
2. Each sample for accuracy testing is analyzed at the laboratory;
3. Each sample for proficiency testing or accuracy testing is tested according to R9-17-404.03 or R9-17-404.04, using the same procedures and techniques employed for routine sample testing;
4. A proficiency testing service provides the results for each proficiency testing sample directly to the laboratory and the Department;
5. If proficiency testing is provided by the Department, the laboratory submits to the Department payment for the actual costs of the materials for proficiency testing; and
6. If proficiency testing is not provided by the Department, the laboratory selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing.

E. The Department may submit blind proficiency testing samples to a laboratory at any time during the certification period.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-404.03. Method Criteria and References for Chemical Analyses

A. In addition to the definitions in A.R.S. § 36-2801 and R9-17-101, the following definitions apply in this Section unless otherwise stated:

1. "Limit of quantitation" means the lowest concentration of an analyte that may be detected and the concentration of the analyte reliably and accurately determined.
2. "Matrix" means the specific components of a sample, other than the analyte being tested for.
3. "Mid-level standard" means a standard that is between the highest concentration and lowest concentration of standards containing the same substances that are used as a reference when testing for the concentration of an analyte.
4. "Response factor" means the ratio between a signal produced by an analyte relative to a signal produced by an internal standard at a specific concentration.
5. "Retention time" means the length of time taken by an analyte to pass through a chromatography column.
6. "Standard" means a sample of known concentration and containing specific substances that is used as a reference when testing for the concentration of an analyte.

B. To perform laboratory testing using chemical analytical methods for any of the analytes in Table 3.1 Analytes , a laboratory may use:

1. An established national or international chemical method; or
2. A laboratory-developed method that was validated according to:
   a. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_k.pdf;
   b. USDA - Guidelines for the Validation of Chemical Methods for the FDA FVM Program, 2nd Edition, April 2015, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.fda.gov/media/81810/download; or
   c. ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1__Guideline.pdf or https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology.

C. A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product by chemical analytical methods are:

1. Set up, tuned, and calibrated according to:
   a. Manufacturer's acceptance criteria, or
   b. Criteria validated according to subsection (B), as applicable;
2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.aoac.org/aoac-accreditation-guidelines-for-laboratories-alacc; and
3. Applicable for the analytes to be tested.

D. A technical laboratory director shall ensure that for an initial demonstration of capability:
1. Before implementing a method, at least four replicate reference samples for each analyte are:
   a. Spiked into a clean matrix with, as applicable, an amount ± 20% of the maximum allowable concentration for the analyte in Table 3.1 Analytes
   or the mid-level standard for potency testing;
   b. Taken through the entire sample preparation and analysis process;
   c. Have a relative standard deviation of ± 20%; and
   d. Have an accuracy that meets the acceptance criteria in subsection (K)(2)(c);
2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and
3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.

E. For potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents, a technical laboratory director shall ensure that:
1. For establishing the retention time for an analyte, the retention time is determined by three injections, over the course of a 72-hour period, of a standard ± 20% of, as applicable:
   a. The maximum allowable concentration in Table 3.1 Analytes
   for the analyte; or
   b. The mid-level standard for potency testing; and
2. The width of the retention time window for each analyte is defined as ±3 times the standard deviation of the mean absolute retention time that was established during the 72-hour period or 0.1 minutes, whichever is greater.

F. A technical laboratory director shall ensure that:
1. The laboratory complies with the following requirements related to calibration and standards:
   a. Except as specified in subsection (F)(1)(c), a minimum of:
      i. Five standards are used for an average response factor or for a linear model,
      ii. Six standards are used for a quadratic model, and
      iii. Seven standards are used for a cubic model;
   b. An X-value of zero is not included as a calibration point;
   c. A calibration curve for heavy metal testing includes a minimum of three standards and a calibration blank;
   d. One standard is ± 20% of the limit of quantitation;
   e. Except as specified in subsection (F)(1)(f) and as applicable, one standard for each analyte is ± 20% of the:
      i. Maximum allowable concentration in Table 3.1 Analytes
      for the analyte, or
      ii. Mid-level standard for potency testing; and
   f. For testing for residual solvents, either:
      i. One standard for each analyte is ± 20% of the maximum allowable concentration in Table 3.1 Analytes
      for the analyte; or
      ii. A standard is created containing a concentration of specific analytes that is a dilution factor from the maximum allowable concentration in Table 3.1 Analytes
      for the analyte and is used when performing multiple runs on a sample, with or without dilution, to cover the range of maximum allowable concentrations in Table 3.1 Analytes
      ;
   g. One standard is above the maximum allowable concentration in Table 3.1 Analytes
   for an analyte;
2. The acceptance criteria for testing is one of the following, as applicable:
   a. The maximum relative standard deviation for the average calibration factor, for an external calibration model, or the response factor, for an internal calibration model, is no more than 20%; and
   b. For linear and non-linear calibration models, the coefficient of determination (r2) is greater than or equal to 0.99;
3. For chromatographic testing methods using internal standards for calibration:
   a. The relative retention time of each analyte to the internal calibration standard is within 0.06 units;
   b. The areas of the peaks for the internal standards in any sample are between 50 and 200% of the area of the peak of the internal standard in subsection (F)(1)(e) used for calibration; and
   c. The internal standards:
      i. Have retention times similar to the analytes being tested for,
      ii. Do not interfere with any of the analytes, and
      iii. Have similar chemical properties as the analytes being tested for; and
4. For methods testing for heavy metals using internal standards, the internal standards:
   a. Are appropriate for the analyte, and
   b. Do not interfere with any of the analytes.

G. To obtain an acceptable calibration, a technical laboratory director:
1. May use any of the following options:
   a. Perform instrument maintenance to optimize analyte responses, as long as all resulting calibration models meet the acceptance criteria appropriate for the analyte;
   b. If the problem appears to be associated with a single standard:
      i. Reanalyze that one standard, at the time of calibration and before any samples are analyzed, to rule out problems due to random error: and
      ii. Recalculate and reevaluate the standard against the acceptance criteria;
   c. Narrow the calibration range by replacing one or more of the calibration standards at the upper or lower ends of the curve;

d. Narrow the calibration range by removing data points from either extreme end of the range and recalculating the calibration function; or
e. Perform a new initial calibration according to subsection (F); and

2. May not:
a. Remove data points from within a calibration range while still retaining the extreme ends of the calibration range, or
b. Use non-linear calibrations to compensate for detector saturation or to avoid proper instrument maintenance.

H. A technical laboratory director shall ensure that for initial calibration verification:

1. Standards are prepared either from a different source or from a different lot of standards from the same source than the source from which the initial calibration standards specified in subsection (F)(1) were obtained and muse s as applicable:
a. Be ± 20% of:
i. The maximum allowable concentrations for an analyte in Table 3.1 Analytes
,
ii. According to subsection (F)(1)(f)(ii), or
iii. The mid-level standard for potency testing; and
b. Contain all analytes being reported to comply with R9-17-317(A)(5); and

2. The following acceptance criteria are used:
a. For potency testing, 80 to 120% recovery of true value;
b. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 to 130% recovery of the true value; and
c. For heavy metal testing, 90 to 110% recovery of the true value.

I. A technical laboratory director shall ensure that for the limit of quantitation:

1. The limit of quantitation is initially verified by the analysis of at least seven replicate samples, spiked at the limit of quantitation, and processed through all preparation and analysis steps of the method;
2. The signal-to-noise ratio of the replicate samples in subsection (I)(1) is at least 5:1;
3. The mean recovery of the replicate samples in subsection (I)(1) is:
a. For potency testing, ± 20% of the true value;
b. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, ± 50% of the true value; and
c. For heavy metal testing, ± 35% of the true value;
4. The relative standard deviation of the replicate samples in subsection (I)(1) is less than 20%;
5. The limit of quantitation is, as applicable, no greater than:
a. Half the maximum allowable concentrations for an analyte in Table 3.1 Analytes
;
b. For chlorfenapyr, cyfluthrin, or cypermethrin, the maximum allowable concentrations for the analyte in Table 3.1 Analytes
; or
c. 1.0 mg/g for each analyte for potency testing;
6. Any changes to specific sample amounts, dilutions, or volumes employed are reflected in the limit of quantitation stated on a sample report;
7. The signal-to-noise ratio in subsection (I)(2) is reverified each time the instrument used for testing is calibrated; and
8. Documentation of the current limit of quantitation is maintained for each analyte for each instrument.

J. Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis:

1. Continuing calibration verification standards:
a. Are prepared from the same calibration standard source used to prepare the standards specified in subsection (F)(1):
i. Initially, with a concentration ± 20% of, as applicable, the maximum allowable concentration for an analyte in Table 3.1 Analytes
, according to subsection (F)(1)(f)(ii), or the mid-level standard for potency testing for all analytes being reported to comply with R9-17-317(A)(5); and
ii. Subsequently, with a concentration at or between the highest concentration and lowest concentration of standards for the analytes in the batch;
b. Have the following acceptance criteria:
i. For potency testing, 80 - 120% recovery of true value;
ii. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 - 130% recovery of the true value; and
iii. For heavy metal testing, 90 - 110% recovery of the true value;

2. If internal standards are used in continuing calibration verification, the acceptability criteria of the internal standards is determined as follows:
a. For testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by mass spectrometry, if the area of the peak for an internal standard is different by a factor of two from the area of the respective standard in subsection (F)(1)(e), for the most recent initial calibration sequence, according to subsection (F):
i. The mass spectrometer is inspected for malfunctions and corrected, and
ii. Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(ii) before any samples are tested; and
b. For heavy metal testing:
i. The intensity of an internal standard is monitored for each analysis to ensure that the intensity does not vary by more than ± 30%, with respect to the intensity during the initial calibration in subsection (F); and
ii. If the intensity of an internal standard is outside the range also observed in the calibration blank required in subsection (F)(1)(c):
(1) Testing is stopped until the problem is corrected, the instrument is recalibrated, and the new calibration is verified;
(2) Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(iii) before any samples are tested; and
(3) The affected samples are retested; and

3. The frequency of continuing calibration verification is as follows:
a. For testing by a method other than mass spectrometry:
i. At the beginning of the test;
ii. After every 20 samples, not counting a quality control sample, such as a sample required in subsection (K); and
iii. At the end of the test; and

b. For testing by mass spectrometry:
i. At the beginning of the testing,
ii. After every 12 hours of running, and
iii. At the end of the run.

K. Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis:
1. A method blank, with a matrix similar to each type of sample matrix to be tested within the batch:
a. Contains the same internal standards as the samples in the batch,
b. Is prepared and tested with each batch, and
c. Produces results below the limit of quantitation;
2. Except as provided in subsection (R), a laboratory control sample and duplicate:
a. Are prepared ± 20% of, as applicable:
i. The maximum allowable concentrations for an analyte in Table 3.1 Analytes
,
ii. According to subsection (F)(1)(f)(ii), or
iii. The mid-level standard for potency testing;
b. Are carried through all stages of sample preparation and included with each analytical batch of up to 20 samples; and
c. Have the following acceptance criteria:
i. For potency testing, 80 - 120% recovery of true value;
ii. Except as specified in subsection (K)(2)(c)(iii), for testing for pesticides, fungicides, or growth regulators, 70 - 130% recovery of the true value;
iii. For Acequinocyl, Bifenthrin, Fludioxomil, Hexythiazox, Imazalil, Naled, Imidacloprid, and Spiroxamine, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10);
iv. For residual solvents except propane and butane, 70 - 130% recovery of the true value;
v. For propane or butane, 60 - 140% recovery of the true value;
vi. For herbicides and mycotoxins, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10); and
vii. For heavy metal testing, 80 - 120% recovery of the true value;
3. The relative percent difference for the laboratory control sample and duplicate for each analyte, calculated on the basis of concentration or amount, is no more than 20%; and
4. A matrix spike derived from the dispensary-submitted sample:
a. Is prepared ± 20% of, as applicable, the maximum allowable concentrations for an analyte in Table 3.1 Analytes
or the mid-level standard for potency testing;
b. Is carried through all stages of sample preparation and included with each analytical batch of up to 20 samples for each matrix type; and
c. Has either the following acceptance criteria or acceptance criteria within statistically derived limits developed by the laboratory:
i. For potency testing, 80 - 120% recovery of true value or according to control limits derived according to R9-17-404.05(B)(10);
ii. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10); and
iii. For heavy metal testing, 75 - 125% recovery of the true value.

L. A technical laboratory director shall ensure that:
1. Except as provided in subsection (P), for potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by mass spectrometry, the relative intensities of the characteristic ions agrees within 30% of the relative intensities of these ions in the reference spectrum; and
2. For heavy metal testing, the intensity of each internal standard is monitored for each analysis to ensure that the intensity does not vary more than ±30%, with respect to the intensity of the internal standard during the initial calibration specified in subsection (F).

M. A technical laboratory director shall ensure that the resolution of chromatographic peaks in potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by a method other than mass spectrometry is maintained so that the height of the valley between the two chromatographic peaks is less than 50% of the average of the two peak heights.

N. A technical laboratory director shall ensure that confirmation for testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by a method other than mass spectrometry:
1. Is performed using:
a. A second column:
i. That has a stationary phase dissimilar to the stationary phase in the primary column, and
ii. From which the analyte is eluted in a different order than from the primary column;
b. A different instrument type, such as gas chromatography followed by mass spectrometry;
c. Gas chromatography with two different types of detectors; or
d. Other recognized confirmation techniques;
2. Meets the applicable criteria in subsections (D) through (M); and
3. Includes as part of the confirmation of the analyte:
a. An evaluation of the agreement of the quantitative values of the results from both methods of testing; and
b. Determination of the relative percent difference between the values.

O. If the relative percent difference between the values obtained according to subsection (N) is more than 40%, a technical laboratory director shall ensure that:
1. The chromatograms are checked to see if an obviously overlapping peak is causing an erroneously high result, and the chromatographic conditions are reviewed; and
2. Either:
a. If a problem is found with one of the tests, the result from the other test is reported; and
b. If there is no evidence of a chromatographic problem, the higher result is reported.

P. A technical laboratory director may release testing results that are scientifically valid and defensible, according to R9-17-404.06(B)(3), with the following data qualifier notations if:
1. The target analyte detected in the calibration blank required in subsection (F)(1)(c) or the method blank specified in subsection (K)(1) is at or above the limit of quantitation, but the sample result:
a. For potency testing, is below the limit of quantitation – B1; or

b. When testing for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents, is below the maximum allowable concentration in Table 3.1 Analytes
for the analyte – B2;
2. The limit of quantitation and the sample results were adjusted to reflect sample dilution – D1;
3. The relative intensity of a characteristic ion in a sample analyte exceeded the acceptance criteria in subsection (L)(1) with respect to the reference spectra, indicating interference – I1;
4. When testing for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents, the percent recovery of a laboratory control sample is greater than the acceptance limits in subsection (K)(2)(c), but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 Analytes
for the analytes in the sample – L1;
5. The recovery from the matrix spike in subsection (K)(4) was:
a. High, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M1,
b. Low, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M2, or
c. Unusable because the analyte concentration was disproportionate to the spike level, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M3;
6. The analysis of a spiked sample required a dilution such that the spike recovery calculation does not provide useful information, but the recovery from the associated laboratory control sample in subsection (K)(2) was within acceptance criteria – M4;
7. The analyte concentration was determined by the method of standard addition, in which the standard is added directly to the aliquots of the analyzed sample – M5;
8. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) – N1;
9. The relative percent difference for the laboratory control sample and duplicate exceeded the limit in subsection (K)(3), but the recovery in subsection (K)(2) was within acceptance criteria – R1;
10. The relative percent difference for a sample and duplicate exceeded the limit in subsection (O) – R2; or
11. The recovery from continuing calibration verification standards exceeded the acceptance limits in subsection (J)(1)(b), but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 Analytes
for the analytes in the sample – V1.

Q. A technical laboratory director shall include in the final report of testing, according to R9-17-404.06(B)(3)(d)(iii), the following data qualifier notations if:
1. Sample integrity was not maintained – Q1;
2. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices – Q2; or
3. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 – Q3.

R. For batch analysis of samples to determine potency, a technical laboratory director may check precision by using either a duplicate laboratory control sample or a duplicate sample prepared from the medical marijuana or marijuana product being tested, according to requirements in subsections (K)(2) and (3).

S. A technical laboratory director shall ensure that the reporting units for:
1. Pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents are in parts per million (ppm); and
2. Potency are:
a. In either:
i. Percent (w/w) relative to the bulk plant material or marijuana product, as applicable: or
ii. Number of milligrams per designated unit; and
b. For:
i. Total tetrahydrocannabinol, the sum of tetrahydrocannabinolic acid (THC-A), multiplied by 0.877, and delta-9-tetrahydrocannabinol (Δ9-THC); and
ii. Total cannabidiol, the sum of cannabidiolic acid (CBD-A), multiplied by 0.877, and cannabidiol (CBD).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2848, with an immediate effective date of October 15, 2020; amended by exempt rulemaking at 26 A.A.R. 2991, effective November 1, 2020; amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.04. Method Criteria and References for Analyses for Microbial Contaminants

A. To perform laboratory testing for the microbial contaminants in Table 3.1 Analytes
, a laboratory shall use an applicable method:
1. Described in:
a. The Bacteriological Analytical Manual (BAM), 2019, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.fda.gov/food/laboratory-methods-food/bacteriological-analytical-manual-bam; or
b. AOAC Official Methods of Analysis, 21st Edition, 2019, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.aoac.org/official-methods-of-analysis-21st-edition-2019; and
2. Validated according to, as applicable:
a. AOAC - Appendix J: Guidelines for Validation of Microbiological Methods for Food and Environmental Surfaces, 2012, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_j.pdf;
b. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_k.pdf; or
c. ICH – Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1__Guideline.pdf or https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology.

B. A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product for microbial contaminants are:
1. Set up, calibrated, and verified according to:
a. Manufacturer's acceptance criteria; and
b. Requirements for the specific method, as specified in subsection (A)(1)(a) or (b), as applicable;

2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, 6.3: Facilities and Environmental Conditions, 6.4: Equipment, 7.7: Ensuring the Validity of Results, and Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments, and is available at https://www.aoac.org/aoac-accreditation-guidelines-for-laboratories-alacc; and
3. Applicable for the analytes to be tested.

C. A technical laboratory director shall ensure that:
1. The organisms required as controls are checked, as appropriate for their application:
   a. To ensure there is no contamination with other organisms,
   b. For verification of biochemical or other biological characteristics, and
   c. To ascertain the number of organisms; and
2. Documentation is maintained of the:
   a. Checking required in subsection (C)(1), and
   b. Traceability of the organisms in subsection (C)(1) from date of possession.

D. A technical laboratory director shall ensure that for an initial demonstration of capability:
1. Before implementing a method, at least four replicate reference samples for each analyte are:
   a. Spiked with control organisms at an amount allowing for quantitation, and
   b. Taken through the entire sample preparation and analysis process;
2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and
3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.

E. A technical laboratory director shall ensure that each batch of media or reagent:
1. Is examined to ensure it is suitable for use;
2. If externally prepared, has a certificate of meeting quality control standards, issued by the manufacturer;
3. If internally prepared, has documentation of:
   a. Instructions for preparation;
   b. Traceability to dehydrated media or reagent concentrate;
   c. Sterility, including, as applicable:
      i. Autoclave records showing the date, run number, autoclave identifier, nature of the material being autoclaved, time at desired temperature, and name of the laboratory agent starting the autoclave; and
      ii. For another sterilization method, records showing the date, type of sterilization method, nature of the material being sterilized, confirmation of the sterilization as applicable to the method, and name of the laboratory agent initiating the sterilization method;
   d. Checking for the following, as applicable, including the name of the laboratory agent who performed the check and date of the check:
      i. pH,
      ii. Appearance,
      iii. Fill volumes,
      iv. Batch size, and
      v. Quantity; and
4. Undergoes quality control verification, as applicable, including the name of the laboratory agent who performed the verification and date of verification, for:
   a. The ability of media to sustain growth of the organism for which the media will be used;
   b. If applicable, the ability of media to select for specific organisms or characteristics of an organism;
   c. The ability of a reagent to function as intended; and
   d. Sterility of the media or reagent before use.

F. If test kits or other identification systems are used for laboratory testing, a technical laboratory director shall ensure that:
1. Each lot of test kits or other identification systems undergoes quality control verification, including the name of the laboratory agent who performed the verification and date of verification, for:
   a. Having a certificate of meeting quality control standards, issued by the manufacturer; and
   b. Passing a visual inspection of physical characteristics;
2. If an identification system is intended to speciate organisms, the identification system is tested with at least one control organism appropriate for the identification system to confirm acceptability; and
3. For testing using ELISA:
   a. The ELISA testing calibration curve has at least four standards;
   b. The standards in subsection (F)(3)(a) bracket the maximum allowable contaminants in Table 3.1 Analytes for the analyte; and
   c. For linear and non-linear calibration models, the coefficient of determination (r2) is greater than or equal to 0.99.

G. A technical laboratory director shall ensure that:
1. For testing for Aspergillus with a plating method:
   a. One of the following plating media is used:
      i. Malt extract agar, BAM Media M182;
      ii. Dichloran rose bengal chloramphenicol agar, BAM Media M183: or
      iii. Potato dextrose agar with rose bengal and chloramphenicol; and
   b. PetrifilmTM, SimplateTM, or another pre-made plate that is unsuitable for growing spreading molds is not used; and
2. For testing for mycotoxins by any method, at least a 0.5 g sample is tested.

H. A technical laboratory director shall include in the final report of testing, according to R9-17-404.06(B)(3)(d)(iii), the following data qualifier notations if:
1. The limit of quantitation and the sample results were adjusted to reflect sample dilution - D1;
2. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) - N1;
3. Sample integrity was not maintained - Q1;
4. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices - Q2; or
5. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 - Q3.

I. A technical laboratory director shall ensure that:
1. The reporting units for Escherichia coli are colony forming units per gram (CFU/g);
2. Reporting for Salmonella is “Detected” or “Not detected” in one gram;

3. Reporting for Aspergillus is "Detected" or "Not detected" in one gram; and
4. Reporting for mycotoxins includes:
   a. Total aflatoxins in units of micrograms per kilogram (µg/kg), and
   b. Ochratoxin A in units of micrograms per kilogram (µg/kg).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.05. Quality Assurance

A. An owner holding a laboratory registration certificate or applicant shall ensure that the analytical data produced at the owner's or applicant's laboratory are of known and acceptable precision and accuracy, as prescribed by the method criteria for each analyte in R9-17-404.03 or R9-17-404.04, and are scientifically valid and defensible.

B. An owner holding a laboratory registration certificate or applicant shall establish, implement, and comply with a written quality assurance plan that contains the following and is available at the laboratory for Department review:
1. A title page identifying the laboratory and date of review and including the technical laboratory director's signature of approval;
2. A table of contents;
3. An organization chart or list of the laboratory personnel, including names, lines of authority, and identification of principal quality assurance personnel;
4. A copy of the current laboratory registration certificate and a list of approved parameters;
5. A statement of quality assurance objectives, including data quality objectives with precision and accuracy goals and the criteria for determining the acceptability of each testing;
6. Specifications for preservation of samples;
7. A procedure for documenting laboratory receipt of samples and tracking of samples during laboratory testing;
8. A procedure for analytical instrument calibration, including frequency of calibration and complying with the requirements for calibration in subsection (D);
9. A procedure for testing data reduction and validation and reporting of final results, including the identification and treatment of data outliers, the determination of the accuracy of data transcription, and all calculations;
10. If using control limits derived by the laboratory as a basis for determining acceptance of a testing result, a procedure to ensure that the control limits are:
    a. Statistically significant, valid, and defensible; and
    b. Updated at least every 12 months;
11. A statement of the frequency of all quality control checks;
12. A statement of the acceptance criteria for all quality control checks;
13. Preventive maintenance procedures and schedules;
14. Assessment procedures for data acceptability, including appropriate procedures for manual integration of chromatograms and when manual integration is inappropriate;
15. Corrective action procedures to be taken when results from analytical quality control checks are unacceptable, including steps to demonstrate the presence of any interference if the precision, accuracy, or limit of quantitation of the reported testing result is affected by the interference; and
16. Procedures for chain-of-custody documentation, including procedures for the documentation and reporting of any deviation from the sample handling or preservation requirements.

C. An owner holding a laboratory registration certificate or applicant shall ensure that a laboratory's written quality assurance plan is a separate document available at the laboratory and includes all of the components required in subsection (B), but an owner or applicant may satisfy the components required in subsections (B)(3) through (15) through incorporating by reference provisions in separate documents, such as standard operating procedures.

D. An owner holding a laboratory registration certificate or applicant shall:
1. Have available at the laboratory all methods, equipment, reagents, and supplies necessary for the testing for which the owner or applicant is approved or is requesting approval;
2. Use only reagents of a grade equal to or greater than that required by the method criteria in R9-17-404.03 or R9-17-404.04, and document the use of the reagents;
3. Maintain and require each laboratory agent performing testing on medical marijuana or a marijuana product to comply with a complete and current standard operating procedure that meets the requirements for each method, as specified in R9-17-404.03 or R9-17-404.04, which shall include at least:
   a. A description of all procedures to be followed when the method is performed;
   b. A list of the concentrations for calibration standards, check standards, and spikes;
   c. Requirements for instrumental conditions and set up;
   d. A requirement for frequency of calibration;
   e. The quantitative methods to be used to calculate the final concentration of an analyte in samples, including any factors used in the calculations and the calibration algorithm used; and
   f. Requirements for preventative maintenance;
4. Calibrate each instrument as required by the standard operating procedure, as specified in R9-17-404.03 or R9-17-404.04, for which the equipment is used;
5. Maintain calibration documentation, including documentation that demonstrates the calculations performed using each calibration model;
6. Develop, document, and maintain a current limit of quantitation, as specified in R9-17-404.03, for each compliance parameter for each instrument;
7. For each parameter and analyte tested at the laboratory use the quality control acceptance criteria specified according to R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes
;
8. Discard or segregate all expired standards or reagents;
9. Maintain a record showing the traceability of reagents; and
10. Ensure that a calibration model is not used or changed to avoid necessary instrument maintenance.

E. Except as provided in subsection (F), an owner holding a laboratory registration certificate or applicant shall ensure that each laboratory standard operating procedure is a separate document available at the laboratory and includes all of the components required in subsection (D)(3).

F. An owner holding a laboratory registration certificate or applicant may satisfy the components required in subsections (D)(3)(e) and (f) through incorporating by reference provisions in separate documents, such as other standard operating procedures.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.06. Operations

A. A technical laboratory director shall ensure that:
1. A sample of medical marijuana or a marijuana product accepted at the technical laboratory director's laboratory is analyzed:
   a. Either:
      i. At the laboratory, or
      ii. For testing of parameters or analytes that the laboratory is not approved by the Department to conduct, at another laboratory with an approval for testing issued by the Department; and
   b. As received;
2. If an instrument or equipment used for testing medical marijuana or a marijuana product has a mechanism to track any changes made to testing results, the tracking mechanism is installed and activated;
3. The facility and utilities required to operate equipment and perform testing of medical marijuana or marijuana products are maintained;
4. Environmental controls are maintained within the laboratory to ensure that laboratory environmental conditions do not affect analytical results beyond quality control limits established for the methods performed at the laboratory;
5. Storage, handling, and disposal of hazardous materials at the laboratory are in accordance with all state and federal regulations;
6. The laboratory complies with all applicable federal, state, and local occupational safety and health regulations; and
7. The following information is maintained for all laboratory agents providing supervisory, quality assurance, or analytical functions related to testing of medical marijuana or a marijuana product:
   a. A summary of each laboratory agent's education and professional experience;
   b. Documentation of each laboratory agent's applicable certifications and specialized training;
   c. Information related to the laboratory agent's registry identification card;
   d. Documentation of each laboratory agent's review of the quality assurance plan required under R9-17-404.05(B) and the methods and laboratory standard operating procedures for all testing of marijuana or marijuana products performed by the laboratory agent or for which the laboratory agent has supervisory or quality assurance responsibility;
   e. Documentation of each laboratory agent's completion of training on the use of equipment and of proper laboratory technique, including the name of the laboratory agent, the name of the instructor, the duration of the training, and the date of completion of the training;
   f. Documentation of each laboratory agent's completion of training classes, continuing education courses, seminars, and conferences that relate to the testing procedures used by the laboratory agent for testing of marijuana or marijuana products;
   g. Documentation of each laboratory agent's completion of initial demonstration of capability, as required in R9-17-404.03(D)(3) or R9-17-404.04(D)(3), for each approved method performed by the laboratory agent;
   h. Documentation of each laboratory agent's performance of proficiency testing or accuracy testing, as applicable; and
   i. Documentation of each laboratory agent's completion of training related to instrument calibration that includes:
      i. Instruction on each calibration model that the laboratory agent will use or for which the laboratory agent will review data;
      ii. For each calibration model in subsection (A)(7)(i)(i), description of the specific aspects of the calibration model that might compromise the data quality, such as detector saturation, lack of detector sensitivity, the calibration model's not accurately reflecting the calibration points, inappropriate extension of the calibration range, weighting factors, and dropping of mid-level calibration points without justification; and
      iii. Instruction that a calibration model shall not be used or changed to avoid necessary instrument maintenance.

B. A technical laboratory director shall ensure that:
1. A testing record for marijuana or marijuana products contains:
   a. Sample information, including the following:
      i. A unique sample identification assigned at the laboratory;
      ii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the amount, strain, and batch number;
      iii. The sample collection date and time; and
      iv. The type of testing to be performed, including whether the testing is to satisfy the requirement in R9-17-317.01(A) or for a dispensary's information only;
   b. A picture of the sample as submitted;
   c. The name and registry identification number of the dispensary, qualifying patient, or designated caregiver submitting the sample to the laboratory;
   d. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;
   e. The date and time of receipt of the sample at the laboratory;
   f. The name and registry identification number of the laboratory agent who received the sample at the laboratory;
   g. The dates and times of testing, including the date and time of each critical step;
   h. Whether testing results related to a sample were changed;
   i. If testing results related to a sample were changed, what was changed, the name of the laboratory agent who changed the testing results, the time and date the data were changed, and why the testing results were changed;
   j. If testing results were changed due to retesting:
      i. What was used or done to the sample, and
      ii. The original and changed testing results;
   k. The actual results of testing, including all raw data, work sheets, and calculations performed;
   l. The actual results of quality control data validating the testing results, including the calibration and calculations performed;
   m. The name of each laboratory agent who performed the testing; and
   n. A copy of the final report;
2. A testing result for medical marijuana or a marijuana product that is known to be inaccurate is not reported; and
3. Except as specified in subsection (C), a final report of testing of marijuana or marijuana products contains:
   a. The name, address, and telephone number of the laboratory;

b. The registry identification number assigned to the laboratory by the Department;
c. Actual scientifically valid and defensible results of testing of a sample of medical marijuana or a marijuana product in appropriate units of measure, obtained in accordance with R9-17-404.03, R9-17-404.04, and the quality assurance plan;
d. As applicable:
i. A statement that testing results were obtained according to requirements in the quality assurance plan in R9-17-404.05, in the applicable standard operating procedure, and in R9-17-404.03 or R9-17-404.04;
ii. A description of any variances from the requirements in the quality assurance plan in R9-17-404.05, the applicable standard operating procedure, R9-17-404.03, or R9-17-404.04 made to ensure scientifically valid and defensible testing results, and the reason for the variance; or
iii. A qualifier according to R9-17-404.03(P) or (Q);
e. A list of each method used to obtain the reported results;
f. Sample information, including the following:
i. The unique sample identification assigned at the laboratory;
ii. A picture of the sample as submitted;
iii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the amount, strain and batch number;
iv. The sample collection date and time;
v. The name and registry identification number of the dispensary, laboratory, qualifying patient, or designated caregiver submitting the sample to the laboratory; and
vi. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;
g. The date of testing for each parameter reported;
h. The date of the final report; and
i. The technical laboratory director's or designee's signature.

C. If a sample of medical marijuana or a marijuana product accepted at a laboratory is analyzed at another laboratory, as allowed according to R9-17-404.06(A)(1)(a)(ii), a technical laboratory director shall ensure that the final report of testing required in subsection (B)(3) includes a copy of the final report of testing from each laboratory to which the laboratory accepting the sample from a dispensary sent a portion of the sample for testing of parameters or analytes that the laboratory is not approved by the Department to conduct.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.07. Adding or Removing Parameters for Testing

A. During the term of a laboratory registration certificate, an owner may request to have one or more parameters:
1. Added to the laboratory registration certificate, or
2. Removed from the laboratory registration certificate.

B. To request a change to one or more parameters, an applicant shall submit to the Department:
1. The following information in a Department-provided format:
a. The name, address, and telephone number of the applicant;
b. The name, address, and telephone number of the laboratory for which the change is requested;
c. If requesting the removal of a parameter, identification of the parameter to be removed;
d. If requesting the addition of a parameter:
i. The analyte to be tested for,
ii. The instruments and equipment to be used for testing,
iii. The software to be used at the laboratory for instrument control and data reduction interpretation, and
iv. The limit of quantitation, if applicable;
e. An attestation that the information provided to the Department to apply for the addition of a parameter is true and correct; and
f. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. The following for each parameter requested to be added:
a. A copy of current accreditation;
b. A copy of a proficiency testing report, if applicable, or accuracy testing documentation; and
c. A copy of the standard operating procedure; and
3. If applicable, any changes to the quality assurance plan in R9-17-404.05(B) made due to the addition or removal of the parameter.

C. The Department may conduct a laboratory inspection during the substantive review period for a request to have one or more parameters added to a laboratory registration certificate.

D. The Department shall process a request to have one or more parameters added to a laboratory registration certificate as provided in R9-17-107.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card

To obtain a laboratory agent registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the owner shall submit to the Department the following for each laboratory agent:
1. An application in a Department-provided format that includes:
a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
b. The laboratory agent's residence address and mailing address;
c. The county where the laboratory agent resides;
d. The laboratory agent's date of birth;
e. The identifying number on the applicable card or document in subsections (5)(a) through (e);
f. The name and registry identification number of the laboratory; and

g. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;

2. An attestation signed and dated by the laboratory agent that the laboratory agent:
   a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, and
   b. Will not test medical marijuana and medical marijuana products for:
      i. A dispensary, related medical marijuana business entity, or management company that the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
      ii. A designated caregiver who the laboratory has a direct or indirect familial or financial relationship with;
3. One of the following:
   a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
   b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;
4. A statement in a Department-provided format, signed by the laboratory agent, pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of the laboratory agent's:
   a. Arizona driver's license issued on or after October 1, 1996;
   b. Arizona identification card issued on or after October 1, 1996;
   c. Arizona registry identification card;
   d. Photograph page in the laboratory agent's U.S. passport; or
   e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
      i. Birth certificate verifying U.S. citizenship,
      ii. U.S. Certificate of Naturalization, or
      iii. U.S. Certificate of Citizenship;
6. A current photograph of the laboratory agent;
7. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
   a. The laboratory agent's fingerprints on a fingerprint card that includes:
      i. The laboratory agent's first name; middle initial, if applicable; and last name;
      ii. The laboratory agent's signature;
      iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
      iv. The laboratory agent's address;
      v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
      vi. The laboratory agent's date of birth;
      vii. The laboratory agent's Social Security number;
      viii. The laboratory agent's citizenship status;
      ix. The laboratory agent's gender;
      x. The laboratory agent's race;
      xi. The laboratory agent's height;
      xii. The laboratory agent's weight;
      xiii. The laboratory agent's hair color;
      xiv. The laboratory agent's eye color; and
      xv. The laboratory agent's place of birth; or
   b. If the laboratory agent's fingerprints and information required in subsection (7)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
8. The applicable fee in R9-17-102 for applying for a laboratory agent registry identification card.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

R9-17-406. Submitting an Application to Renew a Laboratory Agent's Registry Identification Card

To renew a laboratory agent's registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the laboratory shall submit to the Department, at least 30 calendar days before the expiration of the laboratory agent's registry identification card, but no more than 90 days before the expiration date of the laboratory's agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
   a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
   b. The laboratory agent's residence address and mailing address;
   c. The county where the laboratory agent resides;
   d. The laboratory agent's date of birth;
   e. The registry identification number on the laboratory agent's current registry identification card;
   f. The identifying number on the applicable card or document in subsection (6)(a) through (e);
   g. The name and registry identification number of the laboratory; and
   h. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
2. If the laboratory agent's name in subsection (1)(a) is not the same name as on the laboratory agent's current registry identification card, one of the following with the laboratory agent's new name:
   a. An Arizona driver's license,
   b. An Arizona identification card, or
   c. The photograph page in the laboratory agent's U.S. passport;
3. An attestation signed and dated by the laboratory agent that the laboratory agent:
   a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
   b. Will not test medical marijuana and medical marijuana products for:
      i. A dispensary, related medical marijuana business entity or management company the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
      ii. A designated caregiver the laboratory has a direct or indirect familial or financial relationship with;
4. One of the following:

a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;

5. A statement in a Department-provided format signed by the laboratory agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
6. A copy of the laboratory agent's:
   a. Arizona driver's license issued on or after October 1, 1996;
   b. Arizona identification card issued on or after October 1, 1996;
   c. Arizona registry identification card;
   d. Photograph page in the laboratory agent's U.S. passport; or
   e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
      i. Birth certificate verifying U.S. citizenship,
      ii. U.S. Certificate of Naturalization, or
      iii. U.S. Certificate of Citizenship;
7. A current photograph of the laboratory agent;
8. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
   a. The laboratory agent's fingerprints on a fingerprint card that includes:
      i. The laboratory agent's first name; middle initial, if applicable; and last name;
      ii. The laboratory agent's signature;
      iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
      iv. The laboratory agent's address;
      v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
      vi. The laboratory agent's date of birth;
      vii. The laboratory agent's Social Security number;
      viii. The laboratory agent's citizenship status;
      ix. The laboratory agent's gender;
      x. The laboratory agent's race;
      xi. The laboratory agent's height;
      xii. The laboratory agent's weight;
      xiii. The laboratory agent's hair color;
      xiv. The laboratory agent's eye color; and
      xv. The laboratory agent's place of birth; or
   b. If the laboratory agent's fingerprints and information required in subsection (8)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
9. The applicable fee in R9-17-102 for applying to renew a laboratory agent's registry identification card.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

R9-17-407. Inventory Control System

A. A laboratory shall not accept submissions of marijuana or marijuana products for testing from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.

B. A technical laboratory director shall designate in writing a laboratory agent who has oversight of the laboratory's marijuana inventory control system.

C. A technical laboratory director shall establish and implement an inventory control system for the laboratory's medical marijuana and marijuana products that documents:

1. The following amounts in appropriate units:
   a. Each day's beginning inventory of medical marijuana and marijuana products,
   b. Medical marijuana and marijuana products accepted for testing,
   c. The portions of a sample of medical marijuana or a marijuana product removed for testing with the name of the laboratory agent removing each portion,
   d. Medical marijuana and marijuana products transferred to or from another laboratory for testing of parameters or analytes that the laboratory receiving a sample from a dispensary is not approved by the Department to conduct,
   e. Medical marijuana and marijuana products transferred to another laboratory at the request of a dispensary according to R9-17-317.01(C),
   f. Medical marijuana or marijuana products that were disposed of, and
   g. The day's ending medical marijuana and marijuana products inventory;
2. The chain of custody for each sample of medical marijuana or a marijuana product submitted to the laboratory for testing;
3. Any damage to a sample's container or possible tampering;
4. As applicable, for submissions of marijuana and marijuana products for testing:
   a. A description of the submitted marijuana or marijuana products including the amount, strain and batch number;
   b. The name and registry identification number of the dispensary that submitted the marijuana or marijuana products;
   c. The name and registry identification number of the dispensary agent that submitted the marijuana or marijuana products;
   d. The name and registry identification number of the qualifying patient that submitted the marijuana or marijuana products;
   e. The name and registry identification number of the designated caregiver that submitted the marijuana or marijuana products;
   f. The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the laboratory;
   g. The date of acquisition;
   h. The date of each test; and
   i. The testing results; and
5. For disposal of the remaining sample of medical marijuana or a marijuana product after testing:
   a. The amount and description of the medical marijuana or marijuana product being disposed of;
   b. The name and registry identification number of the dispensary submitting the sample,
   c. Date of disposal;
   d. Method of disposal; and

e. Name and registry identification number of the laboratory agent responsible for the disposal.

D. The individual designated in subsection (B) shall conduct and document an audit of the laboratory's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
1. If the audit identifies a reduction in the amount of marijuana or marijuana products in the laboratory's inventory not due to documented causes, the technical laboratory director shall determine where the loss has occurred and take and document corrective action.
2. If the reduction in the amount of marijuana or marijuana products in the laboratory's inventory is due to suspected criminal activity by a laboratory agent, the technical laboratory director shall report the laboratory agent to the Department and to the local law enforcement authorities and document the report.

E. A laboratory shall:
1. Maintain the documentation required in subsections (C) and (D) at the laboratory for at least five years after the date on the document, and
2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-408. Security

A. Except as provided in R9-17-404(8), a laboratory shall ensure that access to the area of the laboratory where marijuana or marijuana products are being tested or stored for testing is limited to a laboratory's owners and authorized laboratory agents.

B. A laboratory agent may transport marijuana or marijuana products submitted for testing to a laboratory.

C. Before transportation to a laboratory, a laboratory agent shall:
1. Complete a trip plan that includes:
   a. The name of the laboratory agent in charge of transporting the marijuana or marijuana products;
   b. The date and start time of the trip;
   c. A description of the marijuana or marijuana products being transported;
   d. Any anticipated stops during the trip, including the locations of the stops; and
   e. The anticipated route of transportation; and
2. Provide a copy of the trip plan in subsection (C)(1) to the laboratory.

D. During transportation to the laboratory, a laboratory agent shall:
1. Carry a copy of the trip plan in subsection (C)(1) with the laboratory agent for the duration of the trip;
2. Use a vehicle without any medical marijuana identification;
3. Have a means of communication with the laboratory; and
4. Ensure that the marijuana or marijuana products are not visible.

E. After transportation, a laboratory agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).

F. If a dispensary agent transports medical marijuana or a marijuana product to a laboratory for testing, the laboratory shall require that a copy of the trip plan be provided by the dispensary before accepting the medical marijuana or marijuana product for testing.

G. A laboratory shall:
1. Maintain the documents required in subsections (C)(2), (E), and (F); and
2. Provide a copy of the documents required in subsections (C)(2), (E), and (F) to the Department for review upon request.

H. To prevent unauthorized access to marijuana or marijuana products at the laboratory for testing, the laboratory shall have the following:
1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:
   a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic device;
   b. Exterior lighting to facilitate surveillance;
   c. Electronic monitoring including:
      i. At least one 19-inch or greater call-up monitor;
      ii. A video printer capable of immediately producing a clear still photo from any video camera image;
      iii. Video cameras:
         (1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building; and
         (2) Having a recording resolution of at least 704 x 480 or the equivalent;
      iv. A video camera in each area of the laboratory where marijuana or marijuana products are being tested or stored for testing capable of identifying any activity occurring within the area in low light conditions;
      v. Storage of video recordings from the video cameras for at least 30 calendar days;
      vi. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
      vii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and
   d. Panic buttons in the interior of each building; and
2. Policies and procedures that:
   a. Restrict access to the areas of the laboratory that contain marijuana or marijuana products and, if applicable, to authorized individuals only;
   b. Provide for the identification of authorized individuals; and
   c. Prevent loitering.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2).

R9-17-409. Physical Plant

A. A laboratory shall ensure that designated storage areas for marijuana or marijuana products or materials used in direct contact with marijuana or marijuana products are:
1. Separate from storage areas for toxic or flammable materials; and
2. Maintained in a manner to prevent:
   a. Microbial contamination and proliferation, and
   b. Contamination or infestation by insects or rodents.

B. A laboratory shall ensure that:
1. Storage areas are designated for:
   a. Medical marijuana and marijuana products awaiting testing;
   b. Reagents, standards, and other testing relates chemicals or materials; and
   c. The remaining portions of tested medical marijuana and marijuana products retained according to R9-17-404(5)(c)(vi);
2. Designated storage areas are monitored to ensure that a:
   a. Room temperature storage area is maintained between 20°C and 28°C,
   b. Refrigerated storage area is maintained between 2°C and 8°C, and
   c. Freezer storage area is maintained at less than -20°C;
3. A storage area for the storage of medical marijuana or marijuana product awaiting testing is labeled to indicate the temperature range and types of medical marijuana or marijuana products to be stored in the storage area;
4. Medical marijuana or a marijuana product awaiting testing is stored at an appropriate temperature, as specified on the packaged sample;
5. Reagents, standards, and other testing relates chemicals or materials are stored according to manufacturer's directions; and
6. The remaining portions of tested medical marijuana and marijuana products are stored in a refrigerated storage area or a freezer storage area to reduce microbial proliferation.

C. A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for microbial contaminants is maintained in a manner to prevent exposure of the medical marijuana or marijuana product to external microbial contaminants.

D. A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents is maintained in a manner to prevent exposure of the medical marijuana or marijuana product to external contamination.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-410. Denial or Revocation of a Laboratory Registration Certificate

A. The Department shall deny an application for a laboratory registration certificate if:
1. The physical address of the laboratory is within 500 feet of a private school or a public school that existed before the date the laboratory submitted the initial laboratory registration certificate application;
2. An owner:
   a. Has been convicted of an excluded felony offense, or
   b. Is under 21 years of age;
3. The application or the laboratory does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter;
4. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
6. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
7. The laboratory fails to maintain accreditation.

B. The Department may deny an application for a laboratory registration certificate if an owner of the laboratory provides false or misleading information to the Department.

C. The Department shall revoke a laboratory's registration certificate if:
1. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
2. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
3. An owner has been convicted of an excluded felony offense;
4. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
5. The laboratory fails to maintain accreditation.

D. The Department may deny an application for a laboratory registration certificate or revoke a laboratory registration certificate if the laboratory does not:
1. Comply with:
   a. The requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
   b. The provisions in a corrective action plan submitted according to R9-17-404.01(E)(2)(b); or
2. Implement the policies and procedures or comply with the statements provided to the Department with the laboratory's application.

E. If the Department denies a laboratory registration certificate application, the Department shall provide notice to the applicant that includes:
1. The specific reason or reasons for the denial, and
2. All other information required by A.R.S. § 41-1076.

F. If the Department revokes a laboratory registration certificate, the Department shall provide notice to the laboratory that includes:
1. The specific reason or reasons for the revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2).

R9-17-411. Denial or Revocation of a Laboratory Agent's Registry Identification Card

A. The Department shall deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent does not meet the requirements in A.R.S. § 36-2801.

B. The Department may deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent provides false or misleading information to the Department.

C. The Department shall revoke a laboratory agent's registry identification card if the laboratory agent:

1. Uses marijuana, if the laboratory agent does not have a qualifying patient registry identification card;
2. Diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; or
3. Has been convicted of an excluded felony offense.

D. The Department may revoke a laboratory agent's registry identification card if the laboratory agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.

E. If the Department denies or revokes a laboratory agent's registry identification card, the Department shall provide notice to the laboratory agent and the laboratory agent's laboratory that includes:

1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

Statutory Authority for Rules in 9 A.A.C. 17

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.

36-2803. Rulemaking; notice; testing of marijuana and marijuana products; fees

A. The department shall adopt rules:

1. Governing the manner in which the department considers petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in section 36-2801, paragraph 3, including public notice of, and an opportunity to comment in a public hearing on, petitions.

2. Establishing the form and content of registration and renewal applications submitted under this chapter.

3. Governing the manner in which the department considers applications for and renewals of registry identification cards.

4. Governing nonprofit medical marijuana dispensaries to protect against diversion and theft without imposing an undue burden on nonprofit medical marijuana dispensaries or compromising the confidentiality of cardholders, including:

(a) The manner in which the department considers applications for and renewals of registration certificates.

(b) Minimum oversight requirements for nonprofit medical marijuana dispensaries.

(c) Minimum recordkeeping requirements for nonprofit medical marijuana dispensaries.

(d) Minimum security requirements for nonprofit medical marijuana dispensaries, including requirements to protect each registered nonprofit medical marijuana dispensary location by a fully operational security alarm system.

(e) Procedures for suspending or revoking the registration certificate of nonprofit medical marijuana dispensaries that violate this chapter or the rules adopted pursuant to this section.

5. Establishing application and renewal fees for registry identification cards, nonprofit medical marijuana dispensary registration certificates and independent third-party laboratory certificates, according to the following:

(a) The total amount of all fees shall generate revenues that are sufficient to implement and administer this chapter, except that fee revenue may be offset or supplemented by private donations.

(b) Nonprofit medical marijuana dispensary application fees may not exceed $5,000.

(c) Nonprofit medical marijuana dispensary renewal fees may not exceed $1,000.

(d) The total amount of revenue generated from nonprofit medical marijuana dispensary application and renewal fees, registry identification card fees for nonprofit medical marijuana dispensary agents and independent third-party laboratory agents and application and renewal fees for independent third-party laboratories shall be sufficient to implement and administer this chapter, including the verification system, except that the fee revenue may be offset or supplemented by private donations.

(e) The department may establish a sliding scale of patient application and renewal fees that are based on a qualifying patient's household income and that are reasonable and related to the actual costs of processing applications and renewals.

(f) The department may consider private donations under section 36-2817 to reduce application and renewal fees.

B. The department of health services shall adopt rules that require each nonprofit medical marijuana dispensary to display in a conspicuous location a sign that warns pregnant women about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report. The rules shall include the specific warning language that must be included on the sign. The cost and display of the sign required by rule shall be borne by the nonprofit medical marijuana dispensary. The rules shall also require each certifying physician to attest that the physician has provided information to each qualifying female patient that warns about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report.

C. The department is authorized to adopt the rules set forth in subsections A and B of this section and shall adopt those rules pursuant to title 41, chapter 6.

D. The department of health services shall post prominently on its public website a warning about the potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding and the risk of being reported to the department of child safety during pregnancy or at the birth of the child by persons who are required to report.

E. Before selling or dispensing marijuana or marijuana products to registered qualified patients or registered designated caregivers, nonprofit medical marijuana dispensaries shall test marijuana and marijuana products for medical use to determine unsafe levels of contamination, including unsafe levels of microbial contamination, heavy metals, pesticides, fungicides, growth regulators and residual solvents and confirm the potency of the marijuana to be dispensed. The dried flowers of the marijuana plant are not required to be tested for residual solvents. If a nonprofit medical marijuana dispensary's test results for heavy metals comply with the prescribed requirements for a period of six consecutive months, heavy metal testing for that dispensary's marijuana and marijuana products is required only on a quarterly basis.

F. Nonprofit medical marijuana dispensaries shall:

1. Provide test results to a registered qualifying patient or designated caregiver immediately on request.

2. Display in a conspicuous location a sign that notifies patients of their right to receive the certified independent third-party laboratory test results for marijuana and marijuana products for medical use.

G. The department shall adopt rules to certify and regulate independent third-party laboratories that analyze marijuana cultivated for medical use. The department shall establish certification fees for laboratories pursuant to subsection A of this section. In order to be certified as an independent third-party laboratory that is allowed to test marijuana and marijuana products for medical use pursuant to this chapter, an independent third-party laboratory:

1. Must meet requirements established by the department, including reporting and health and safety requirements.

2. May not have any direct or indirect familial or financial relationship with or interest in a nonprofit medical marijuana dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state.

3. Must have a quality assurance program and standards.

4. Must have an adequate chain of custody and sample requirement policies.

5. Must have an adequate records retention process to preserve records.

6. Must establish procedures to ensure that results are accurate, precise and scientifically valid before reporting the results.

7. Must be accredited by a national or international accreditation association or other similar accrediting entity, as determined by the department.

8. Must establish policies and procedures for disposal and reverse distribution of samples that are collected by the laboratory.

H. Through December 31, 2022, the department may conduct proficiency testing and remediate problems with independent third-party laboratories that are certified and regulated pursuant to this chapter and marijuana testing facilities that are licensed and regulated pursuant to chapter 28.2 of this title.

I. Beginning January 1, 2023, the department shall conduct proficiency testing and remediate problems with independent third-party laboratories that are certified and regulated pursuant to this chapter and marijuana testing facilities that are licensed and regulated pursuant to chapter 28.2 of this title. The department may contract for proficiency testing with laboratories that have a national or international accreditation.

J. For the purposes of subsections H and I of this section, remediation may include assessing civil penalties and suspending or revoking a laboratory's certification or a marijuana testing facility's license.

K. The department shall adopt rules that prescribe reasonable time frames for testing marijuana and marijuana products.

36-2803.01. New dispensary registration certificates; issuance; priority; requirements; definition

A. Beginning on April 1, 2020, the department shall issue all new nonprofit medical marijuana dispensary registration certificates in the following order of priority based on the dispensary's geographic area as described in the registration certificate application:

1. The geographic area had a registered nonprofit medical marijuana dispensary move from the geographic area and the geographic area is at least twenty-five miles from another dispensary that has been issued a dispensary registration certificate.

2. The geographic area is at least twenty-five miles from another dispensary that has been issued a dispensary registration certificate.

3. According to rule, if there are no dispensary registration certificate applications as described in paragraph 1 or 2 of this subsection.

B. If the department receives multiple applications as described in subsection A, paragraph 1 of this section from previously approved nonprofit medical marijuana dispensary locations, the department shall approve the certificate for the application that serves the most qualifying patients within five miles of the proposed dispensary location. If the department receives multiple applications as described in subsection A, paragraph 2 of this section or if there are no applications from previously approved dispensary locations, the department may issue the registration certificate by random drawing.

C. A nonprofit medical marijuana dispensary that receives a registration certificate pursuant to subsection A, paragraph 1 or 2 of this section on or after April 1, 2020 must open the dispensary at the approved location within eighteen months after the application is approved or the registration certificate becomes invalid.

D. A nonprofit medical marijuana dispensary that is issued a registration certificate pursuant to subsection A, paragraph 1 or 2 of this section may relocate only as follows:

1. If the dispensary is located within a city or town, only within that city or town.

2. If the dispensary is located within an unincorporated area, only within the unincorporated area of the county where the dispensary is located but not within twenty-five miles from another dispensary that has been issued a dispensary registration certificate.

E. For the purposes of this section, "geographic area" means a city, town or unincorporated area of a county.

36-2804. Registration and certification of nonprofit medical marijuana dispensaries

A. Nonprofit medical marijuana dispensaries shall register with the department.

B. Not later than ninety days after receiving an application for a nonprofit medical marijuana dispensary, the department shall register the nonprofit medical marijuana dispensary and issue a registration certificate and a random 20-digit alphanumeric identification number if:

1. The prospective nonprofit medical marijuana dispensary has submitted the following:

(a) The application fee.

(b) An application, including:

(i) The legal name of the nonprofit medical marijuana dispensary.

(ii) The physical address of the nonprofit medical marijuana dispensary and the physical address of one additional location, if any, where marijuana will be cultivated, neither of which may be within five hundred feet of a public or private school existing before the date of the nonprofit medical marijuana dispensary application.

(iii) The name, address and date of birth of each principal officer and board member of the nonprofit medical marijuana dispensary.

(iv) The name, address and date of birth of each nonprofit medical marijuana dispensary agent.

(c) Operating procedures consistent with department rules for oversight of the nonprofit medical marijuana dispensary, including procedures to ensure accurate record-keeping and adequate security measures.

(d) If the city, town or county in which the nonprofit medical marijuana dispensary would be located has enacted zoning restrictions, a sworn statement certifying that the registered nonprofit medical marijuana dispensary is in compliance with the restrictions.

2. None of the principal officers or board members has been convicted of an excluded felony offense.

3. None of the principal officers or board members has served as a principal officer or board member for a registered nonprofit medical marijuana dispensary that has had its registration certificate revoked.

4. None of the principal officers or board members is under twenty-one years of age.

C. The department may not issue more than one nonprofit medical marijuana dispensary registration certificate for every ten pharmacies that have registered under section 32-1929, have obtained a pharmacy permit from the Arizona board of pharmacy and operate within the state except that the department may issue nonprofit medical marijuana dispensary registration certificates in excess of this limit if necessary to ensure that the department issues at least one nonprofit medical marijuana dispensary registration certificate in each county in which an application has been approved.

D. The department may conduct a criminal records check in order to carry out this section.

36-2804.01. Registration; nonprofit medical marijuana dispensary agents; independent third-party laboratory agents; notices

A. A nonprofit medical marijuana dispensary agent or an independent third-party laboratory agent shall be registered with the department before volunteering or working at a nonprofit medical marijuana dispensary or an independent third-party laboratory.

B. A nonprofit medical marijuana dispensary or a certified independent third-party laboratory may apply to the department for a registry identification card for a nonprofit medical marijuana dispensary agent or an independent third-party laboratory agent by submitting:

1. The name, address and date of birth of the prospective nonprofit medical marijuana dispensary agent or independent third-party laboratory agent.

2. A nonprofit medical marijuana dispensary agent or independent third-party laboratory agent application.

3. A statement signed by either:

(a) The prospective nonprofit medical marijuana dispensary agent pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(b) The prospective independent third-party laboratory agent acknowledging that registered independent third-party laboratory agents are prohibited from diverting marijuana pursuant to this chapter.

4. The application fee.

C. A registered nonprofit medical marijuana dispensary or certified independent third-party laboratory shall notify the department within ten days after a nonprofit medical marijuana dispensary agent or independent third-party laboratory agent ceases to be employed by or volunteer at the registered nonprofit medical marijuana dispensary or certified independent third-party laboratory.

D. A person who has been convicted of an excluded felony offense may not be a nonprofit medical marijuana dispensary agent or an independent third-party laboratory agent.

E. The department may conduct a criminal records check in order to carry out this section.

36-2806. Registered nonprofit medical marijuana dispensaries; requirements; rules; inspections; testing

A. A registered nonprofit medical marijuana dispensary shall be operated on a not-for-profit basis. The bylaws of a registered nonprofit medical marijuana dispensary shall contain such provisions relative to the disposition of revenues and receipts to establish and maintain its nonprofit character. A registered nonprofit medical marijuana dispensary need not be recognized as tax-exempt by the internal revenue service and is not required to incorporate pursuant to title 10, chapter 19, article 1.

B. The operating documents of a registered nonprofit medical marijuana dispensary shall include procedures for the oversight of the registered nonprofit medical marijuana dispensary and procedures to ensure accurate recordkeeping.

C. A registered nonprofit medical marijuana dispensary shall have a single secure entrance and shall implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.

D. A registered nonprofit medical marijuana dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the registered qualifying patients' designated caregivers or an independent third-party laboratory agent or a certified independent third-party laboratory for the purposes prescribed in this chapter and department rule.

E. All cultivation of marijuana must take place in an enclosed, locked facility, at a physical address provided to the department during the registration process, that can be accessed only by registered nonprofit medical marijuana dispensary agents associated in the registry with the nonprofit medical marijuana dispensary.

F. A registered nonprofit medical marijuana dispensary may acquire usable marijuana or marijuana plants from a registered qualifying patient or a registered designated caregiver only if the registered qualifying patient or registered designated caregiver receives no compensation for the marijuana.

G. A nonprofit medical marijuana dispensary shall not allow any person to consume marijuana on the property of the nonprofit medical marijuana dispensary.

H. Registered nonprofit medical marijuana dispensaries are subject to reasonable inspection by the department. The department shall give reasonable notice of an inspection under this subsection.

I. Beginning November 1, 2020, registered nonprofit medical marijuana dispensaries are subject to product testing by certified independent third-party laboratories pursuant to this chapter and rules adopted pursuant to this chapter.

J. Notwithstanding title 13, chapter 34, an employee of the department or an independent third-party laboratory agent may not be charged with or prosecuted for possession of marijuana that is cultivated for medical use as required by this chapter and the rules adopted pursuant to this chapter.

36-2819. Fingerprinting requirements

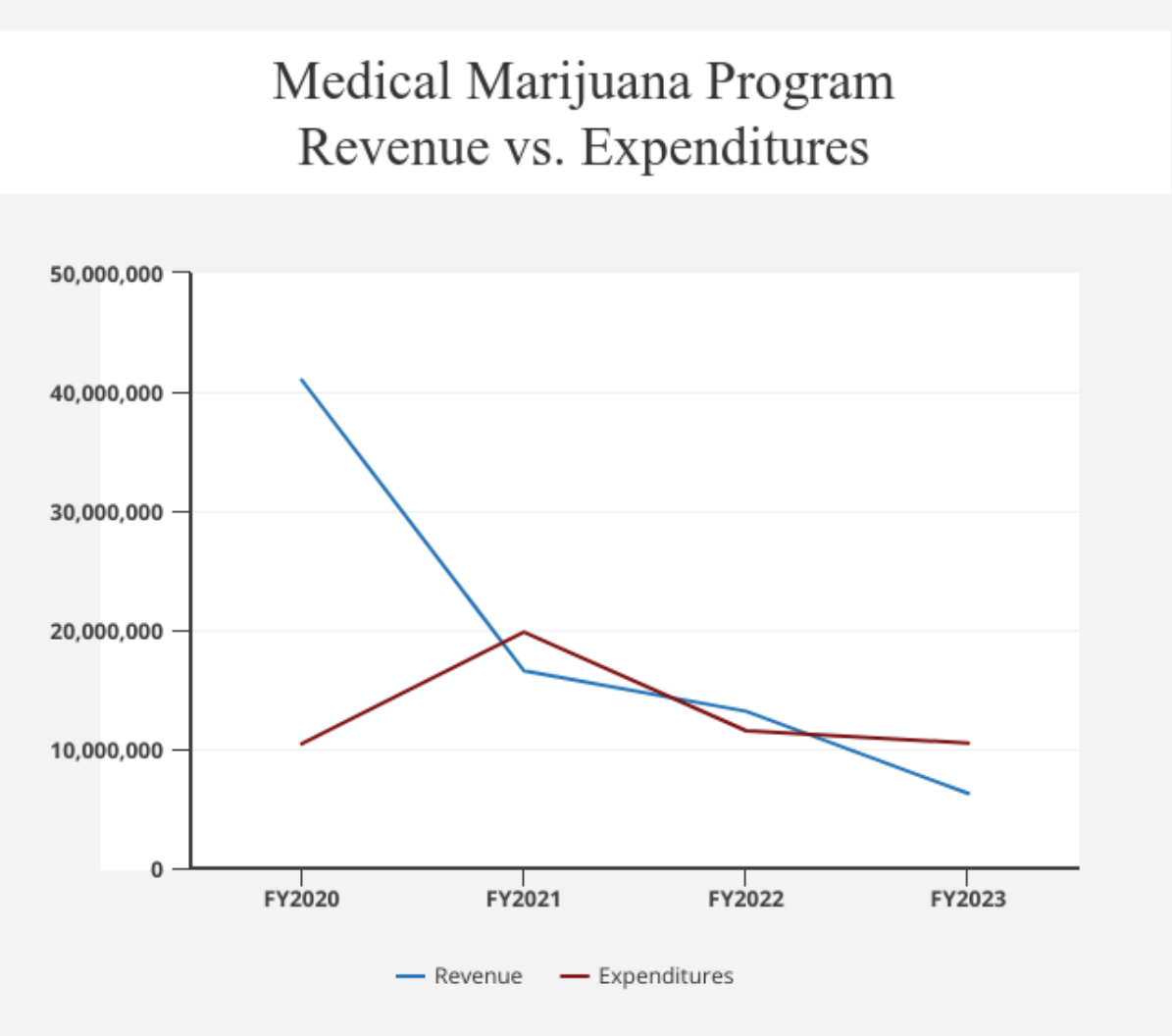
Each person applying as a designated caregiver, a principal officer, agent or employee of a nonprofit medical marijuana dispensary, a medical marijuana dispensary agent or an independent third-party laboratory agent shall submit a full set of fingerprints to the department for the purpose of obtaining 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 without disclosing that the records check is related to the medical marijuana act and acts permitted by it. The department shall destroy each set of fingerprints after the criminal records check is completed.

Dear Council Members,

The information below is intended to answer the questions raised during the Study Session on August 29, 2023 regarding the $2,500 change fee that has been added through the rulemaking for 9 A.A.C. 17. We believe that the information provided demonstrates that the fee is justified.

Arizona Medical Marijuana Program Revenue vs. Expenditures (FY2020-FY2023)

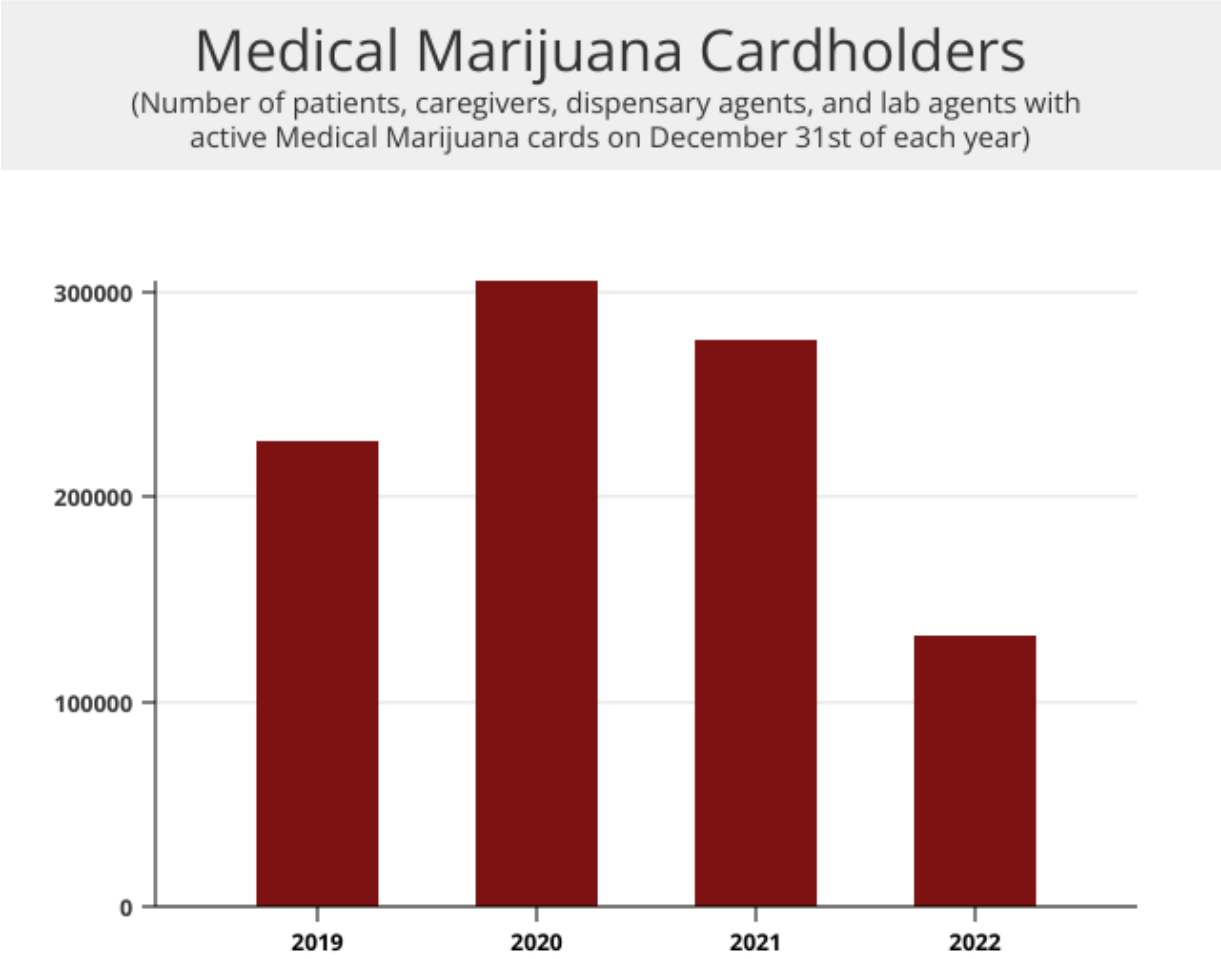
Prior to the passing and implementation of the Safe and Smart Arizona Act (SASAA) in November 2020, which legalized adult-use marijuana, the Medical Marijuana Program's revenue was greater than its expenditures. As you can see in the graph below, FY2020 was the last full year prior to the implementation of the SASAA. The revenue collected from the Medical Marijuana Program has significantly declined every year since the SASAA passed. As the adult-use marijuana industry matures in Arizona, the Department expects revenues to either level off or continue to decline.



Reasons for Decline in Revenue

In Arizona, there are a limited number of Medical Marijuana dispensary licenses (currently 137), so initial dispensary applications only generate revenue when there is an allocation of new licenses; historically, there have only been three allocations of Medical Marijuana dispensary licenses (2012, 2016, and 2023). On top of that, statute caps the fees for dispensary applications at $5,000, and renewal fees cannot exceed $1,000 for a two-year license. Therefore, fees for initial applications are episodic and cannot be relied on as a continuing source of revenue, and revenue derived from renewal fees would amount to only $137,000 every two years.

Because of the limitations listed above, most revenue generated by the Medical Marijuana program has been derived from cardholder application fees. The number of Medical Marijuana cardholders, which includes qualifying patients, designated caregivers, dispensary agents, and lab agents, has significantly declined since the SASAA passed (see chart below).



Reasons Decline in Revenue Has Not Resulted in Similar Decline in Expenditures
The decline in cardholders and the revenue generated by them has not resulted in a corresponding decline in expenditures for several reasons. First, statute requires that the state maintain a sophisticated verification system, with strict security requirements. This verification system has several distinct features to meet the needs of various stakeholders, including:

- Qualifying patients, designated caregivers, dispensary agents, and lab agents must be able to access the system through a portal that gives them access to electronic applications, and electronic issuance of their cards.
- Dispensary agents must be able to access this system to verify patient and caregiver cards, to verify that patients have enough allotment over a rolling 14-day period to make their desired purchase, and to log the amount of marijuana dispensed against that patient's allotment.
- Law enforcement must be able to access the system to verify cards, and see recent transactions.
- Employers must be able to access the system to verify patient cards.

Expenditures were higher than normal in FY2021 largely due to enhancements to the system. Some of these changes were required by statutory changes and by the SASAA. Now, on top of the features already described, all regulatory business for Medical Marijuana dispensary licensees is handled through the electronic portal, including applications, information updates, inspections, enforcement actions, and access to their licenses.

Despite the decrease in cardholders, the number of dispensaries has grown from 130 when the SASAA passed in 2020 to 137 today. Each dispensary can operate up to two locations (a retail dispensary that may also cultivate, and an additional cultivation site). All licensed facilities must be inspected at least once annually, as well as for change applications, and complaint investigations.

In 2019, the legislature also passed SB1494, which required ADHS to begin licensing Medical Marijuana testing labs. The regulation of these labs is also funded by the Medical Marijuana program. Testing has also resulted in more complaints and enforcement actions against licensed facilities, which requires additional resources from the Department and legal counsel.

Justification for Change Fee

Dispensary change applications require significant resources from the Department. The application, which must be submitted through the electronic licensing portal, must first be reviewed for compliance with rule requirements. These applications also require the dispensary licensing team to conduct an onsite inspection of the facility, which can be located anywhere in the state, and may occasionally require several days to complete. If the change being requested involves edible marijuana products, the facility must also obtain a food establishment permit, which requires an inspection by our food safety team, as well. There is no fee for the food permit; therefore, this process must also be funded by the Medical Marijuana program revenue.

Once the application is approved, the dispensary can download, print, and post their updated license straight from their electronic licensing portal immediately.

Renewal Fees in Bordering States

State	Renewal Application Fee	Renewal Licensing Fee
Arizona	None	$1,000 every 2 years
California (Annual Licensing Fee Schedule for Retailer - Type 9 (non-storefront) or 10 (storefront))	$1,000	$2,500 to $96,000 annually, amount is dependent upon gross revenue
Colorado (Medical Marijuana Store)	$1,840	$460 annually
Nevada (Dispensary)	None	$5,000 annually
New Mexico (Vertically Integrated Cannabis Establishment License)	None	● $7,500 annually ● $1,000 annual fee for each licensed premises Annual per plant producer fee $2.50 per plant for each mature medical cannabis plant (up to 8,000 plants)

Renewal Fees in Other States

State	Renewal Application Fee	Renewal Licensing Fee
Arizona	None	$1,000 every 2 years
Ohio (Dispensary)	None	$70,000 + $3.50 transaction fee every two years
Oklahoma (Dispensaries)	$2,500 to $10,000 annually (fees are calculated as 10% of the sum of one year of the dispensary's combined annual state sales tax and state excise (medical marijuana) tax. The state sales tax calculation includes only sales tax payable to the State of Oklahoma, not sales	

	tax to local governments. There is also a credit card processing fee, which is 2.25% of the application fee plus $2 – for example, a $2,500 application fee is calculated as 2.25% of $2,502, for a total credit card processing fee of $58.25.)	
Pennsylvania (Dispensary)	None	$5,000 annually

Medical Marijuana Dispensary Fee Comparison With Other States

State	Change Fee
Arizona Proposed Fee	$2,500
California	$500
Colorado	$150 to $1,300 depending on the modification
Ohio	$5,000
Pennsylvania	$250
Utah	$300 to $1,250 for a change in ownership

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 25, Article 13

Amend: R9-25-1301, R9-25-1304, R9-25-1306, R9-25-1307, R9-25-1308, Table 13.1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 25, Article 13

Amend: R9-25-1301, R9-25-1304, R9-25-1306, R9-25-1307, R9-25-1308, Table 13.1

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend five (5) rules and one (1) table in Title 9, Chapter 25, Article 13 regarding Emergency Medical Services, specifically Trauma Centers and Trauma Registries. Arizona Revised Statutes (A.R.S.) § 36-2225 requires the Department to develop and administer a statewide emergency medical services and trauma system to implement the Arizona emergency medical services and trauma system plan, required under A.R.S. § 36-2208. A.R.S. § 36-2225 further requires the Department to adopt rules for the designation of trauma centers and to require trauma centers to submit data to the trauma registry established by the Department under A.R.S. § 36-2208. The Department indicates it has implemented these statutes in Title 9, Chapter 25, Article 13.

As part of a recent Five-Year Review Report (5YRR), the Department identified several issues with the current rules and proposed making changes to the rules to reduce the regulatory burden, contained herein. For example, the Department is proposing to update inconsistent cross-references, clarify terms, and move around requirements for the injury prevention program and educational outreach program to make the rules more clear, concise, and understandable.

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

The Department indicates the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons as required by A.R.S. § 41-1027(A). Furthermore, the Department indicates this rulemaking seeks to amend rules to address issues identified in a 5YRR, which was approved by the Council on January 4, 2023. Pursuant to A.R.S. § 41-1027(A)(7), an agency may conduct expedited rulemaking if it implements, without material change, a course of action that is proposed in a 5YRR approved by the Council within one hundred eighty days of the date that the agency files the Notice of Proposed Expedited Rulemaking with the Secretary of State. The Department indicates the Notice of Proposed Expedited Rulemaking was published in the Administrative Register on June 30, 2023, which is within 180 days of the January 4, 2023 5YRR approval date. Furthermore, the Department indicates this rulemaking is seeking to amend or repeal rules that are outdated, redundant or otherwise no longer necessary for the operation of state government pursuant to A.R.S. § 41-1027(A)(6). Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. 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.

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

The Department indicates it received no public comments regarding this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register on June 30, 2023 and the Notice of Final Expedited Rulemaking now before the Council.

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

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

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

The Department indicates that the rules do not require a license or permit, but allow for a designation. However, this designation is not required and a health care institution may provide the same services with or without designation.

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

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

9. Conclusion

This expedited rulemaking from the Department seeks to amend five (5) rules and one (1) table in Title 9, Chapter 25, Article 13 regarding Emergency Medical Services, specifically Trauma Centers and Trauma Registries. As part of a recent Five-Year Review Report (5YRR), the Department identified several issues with the current rules and proposed making changes to the rules to reduce the regulatory burden, contained herein. For example, the Department is proposing to update inconsistent cross-references, clarify terms, and move around requirements for the injury prevention program and educational outreach program to make the rules more clear, concise, and understandable.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF HEALTH SERVICES
POLICY & INTERGOVERNMENTAL AFFAIRS

July 17, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Article 13, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 17, 2023

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking amends rules to address issues identified in a five-year-review report approved by the Council on January 4, 2023, as specified in A.R.S. § 41-1027(A)(6). The Department plans to clarify the rules through expedited rulemaking, under A.R.S. § 41-1027, consistent with the five-year review report. The Department believes that making these changes will improve the effectiveness of the rules and reduce regulatory burden.

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 25, Article 13, relates to a five-year-review report approved by the Council on January 4, 2023.

4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutory authority
   c. Current rule

The Department is requesting that the rules be heard at the Council meeting on September 6, 2023.

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES

EMERGENCY MEDICAL SERVICES

PREAMBLE

1.	Article, Part or Sections Affected (as applicable)	Rulemaking Action
	R9-25-1301	Amend
	R9-25-1304	Amend
	R9-25-1306	Amend
	R9-25-1307	Amend
	R9-25-1308	Amend
	Table 13.1	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. §§ 36-132(A)(1), 36-136(G), 36-2202(A)(4)

Implementing statutes: A.R.S. §§ 36-2221, 36-2225

3. The effective date of the rules:

The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.

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: 29 A.A.R. 620, February 24, 2023

Notice of Proposed Expedited Rulemaking: 29 A.A.R. XXXX, June 30, 2023

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

Name: Rachel Garcia, Bureau Chief

Address: Arizona Department of Health Services
Division of Public Health Services
Bureau of Emergency Medical Services and Trauma System
150 N. 18th Avenue, Suite 540
Phoenix, AZ 85007

Telephone: (602) 364-3150

Fax: (602) 364-3568

E-mail: Rachel.Garcia@azdhs.gov

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Stacie.Gravito@azdhs.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 (A.R.S.) § 36-2225 requires the Arizona Department of Health Services (Department) to develop and administer a statewide emergency medical services and trauma system to implement the Arizona emergency medical services and trauma system plan, required under A.R.S. § 36-2208. A.R.S. § 36-2225 further requires the Department to adopt rules for the designation of trauma centers and to require trauma centers to submit data to the trauma registry established by the Department under A.R.S. § 36-2208. The Department has implemented these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 25, Article 13. As part of a recent five-year-review, the Department identified several issues with the current rules and proposed making changes to the rules. After receiving an exception according to A.R.S. § 41-1039(A), the Department plans to clarify the rules through expedited rulemaking, under A.R.S. § 41-1027, consistent with the five-year review report, to reduce the regulatory burden.

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:

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

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

Not applicable

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

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

business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

The Department did not receive public or stakeholder comments about the rulemaking.

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:

The rules do not require a permit, but allow for designation. A health care institution may provide the same services with or without designation.

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 business competitiveness analysis was received by the Department.

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

Not applicable

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:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

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

ARTICLE 13. TRAUMA CENTERS AND TRAUMA REGISTRIES

Section

ARTICLE 13. TRAUMA CENTERS AND TRAUMA REGISTRIES

R9-25-1301. Definitions (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in this Article, unless otherwise specified:

1. "Admitted" means when a patient is either:
   a. Held for observation of a trauma-related injury; or
   b. Considered an inpatient, as defined in A.A.C. R9-10-201.
2. "Business day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.
3. "Designation" means a formal determination by the Department that a health care institution complies with requirements in A.R.S. § 36-2225 and this Article for providing a particular Level of trauma service.
4. "Emergency department" means a designated area of a hospital that provides emergency services, as defined in A.A.C. ~~R9-10-201~~ R9-10-101, as an organized service, 24 hours per day, seven days per week, to individuals who present for immediate medical services.
5. "ICD-code" means an International Classification of Diseases code, a set of numbers or letters or a combination of letters and numbers that specify a disease, condition, or injury; the location of the disease, condition, or injury; or the circumstances under which a patient may have incurred the disease, condition, or injury, which is used by a health care institution for billing purposes.
6. "Level I Pediatric trauma center" means a Level I trauma center that has a trauma service specifically intended to meet the needs of children requiring trauma care.
7. "Level II Pediatric trauma center" means a Level II trauma center that has a trauma service specifically intended to meet the needs of children requiring trauma care.
8. "Medical services" means the services pertaining to the "practice of medicine," as defined in A.R.S. § 32-1401, or "medicine," as defined in A.R.S. § 32-1800, performed at the direction of a physician.
9. "National verification organization" has the same meaning as in A.R.S. § 36-2225.
10. "Nursing services" means services that pertain to the curative, restorative, and preventive aspects of "registered nursing," as defined in A.R.S. § 32-1601, performed:
    a. At the direction of a physician; and
    b. By or under the supervision of a registered nurse licensed:
       i. According to Title 32, Chapter 15; or

ii. When performed in a health care institution operating under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation, by a similar licensing board in another state.

11. "On-call" means assigned to respond and, if necessary, come to a health care institution when notified by a personnel member of the health care institution.
12. "Organized service" has the same meaning as in A.A.C. R9-10-201.
13. "Owner" means one of the following:
    a. For a health care institution licensed under 9 A.A.C. 10, the licensee;
    b. For a health care institution operated under federal or tribal laws, the administrative unit of the U.S. government or sovereign tribal nation operating the health care institution.
14. "Personnel member" means an individual providing medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401, to a patient.
15. "Physician" means an individual licensed:
    a. According to A.R.S. Title 32, Chapter 13 or 17; or
    b. When working in a health care institution operating under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation, by a similar licensing board in another state.
16. "Signature" means:
    a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
    b. An "electronic signature" as defined in A.R.S. § 44-7002.
17. "Substantial compliance" has the same meaning as in A.R.S. § 36-401.
18. "Transport" means the conveyance of a patient by ground ambulance or air ambulance from one location to another location.
19. "Trauma care" means medical services and nursing services provided to a patient suffering from a sudden physical injury.
20. "Trauma center" has the same meaning as in A.R.S. § 36-2225.
21. "Trauma critical care course" means a multidisciplinary class or series of classes consisting of interactive tutorials, skills teaching, and simulated patient management scenarios of trauma care, consistent with training recognized by the American College of Surgeons.
22. "Trauma facility" means a health care institution that provides trauma care to a patient as an organized trauma service.

23. "Trauma service" means designated personnel members, equipment, and area within a health care institution and the associated policies and procedures for the personnel members to follow when providing trauma care to a patient.
24. "Trauma team" means a group of personnel members with defined roles and responsibilities in providing trauma care to a patient.
25. "Trauma team activation" means a notification to respond that is sent to trauma team personnel members in reaction to triage information received concerning a patient with injury or suspected injury.
26. "Verification" means formal confirmation by a national verification organization that a health care institution meets the national verification organization's standards for providing trauma care at a specific Level of trauma service.

R9-25-1304. Changes Affecting Designation Status (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. An owner of a trauma center shall:
1. Notify the Department, in writing or in a Department-provided format, no later than 60 calendar days after the date of a change in the health care institution's:
   a. Name,
   b. Trauma program manager, or
   c. If applicable, trauma medical director; and
2. Provide the effective date of the change and, as applicable, the:
   a. Current and new name of the health care institution, or
   b. Name of the new trauma program manager or trauma medical director.

B. An owner of a trauma center shall notify the Department in writing within three business days after:
1. The trauma center's health care institution license expires or is suspended or revoked;
2. The trauma center's health care institution license is changed to a provisional license under A.R.S. § 36-425;
3. The trauma center no longer holds verification; or
4. A change, which is expected to last for more than seven consecutive calendar days, in the trauma center's ability to meet:
   a. The applicable standards specified in R9-25-1308 and Table 13.1.; or
   b. If designation is based on verification, the national verification organization's standards for verification.

C. At least 90 calendar days before a trauma center ceases to provide a trauma service, the owner of

the trauma center shall notify the Department, in writing or in a Department-provided format, of the owner's intention to cease providing the trauma service and to relinquish designation, including the effective date.

D. The Department shall, upon receiving a notice described in:

1. Subsection (A), issue an amended designation that incorporates the name change but retains the expiration date of the current designation;
2. Subsection (B)(1), send the owner a written notice stating that the health care institution no longer meets the definition of a trauma center and that the Department intends to dedesignate the health care institution, according to R9-25-1307(J)(2);
3. Subsection (B)(2), evaluate the restrictions on the provisional license to determine if the trauma service was affected and may send the owner a written notice of the Department's intention to:
    a. Dedesignate the health care institution, according to R9-25-1307(J) through (M);
    b. Require a modification of the health care institution's designation within 15 calendar days after the date of the notice, according to R9-25-1305; or
    c. Require a corrective action plan to address issues of compliance with the applicable standards specified in R9-25-1308 and Table 13.1, according to R9-25-1306(E);
4. Subsection (B)(3), send the owner written notice that the owner is required, within 15 calendar days after the date of the notice, to submit to the Department:
    a. An application for designation at a specific Level of trauma center, according to R9-25-1303, based on meeting the applicable standards specified in R9-25-1308 and Table 13.1; or
    b. Written notification of the owner's intention to relinquish designation;
5. Subsection (B)(4), send the owner written notice that the owner is required, within 15 calendar days after the date of the notice, to submit to the Department:
    a. An application for modification of the health care institution's designation, according to R9-25-1305;
    b. A corrective action plan to address issues of compliance with the applicable standards specified in R9-25-1308 and Table 13.1, according to R9-25-1306(E); or
    c. Written notification of the owner's intention to relinquish designation; or
6. Subsection (C), (D)(4)(b), or (D)(5)(c), send the owner written confirmation of the voluntary relinquishment of designation.

E. An owner of a trauma center, who obtains verification for the trauma center during a term of designation that was based on the trauma center meeting the applicable standards specified in R9-25-1308 and Table 13.1, may obtain a new initial designation based on verification, with a designation term based on the dates of the verification, by submitting an application according to R9-25-1303.

R9-25-1306. Inspections (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. When the Department inspects a health care institution applying for a trauma center designation or a health care institution designated as a trauma center to determine compliance with the applicable requirements in this Article, the Department:

1. Shall use criteria for assessing compliance developed using recommendations from the State Trauma Advisory Board, according to A.R.S. § 36-2222(E)(1); and
2. May:
    a. Evaluate the health care institution's equipment and physical plant;
    b. Interview the health care institution's personnel members, including any individuals providing trauma care; and
    c. Review any of the following:
        i. Medical records;
        ii. Patient discharge summaries;
        iii. Patient care logs;
        iv. Rosters and schedules of personnel members and individuals who provide trauma care as part of the trauma service;
        v. Performance-improvement-related documents, including quality management program documents required in A.A.C. R9-10-204 or R9-10-1004 as applicable; and
        vi. Other documents relevant to the provision of trauma care as part of the trauma service.

B. The Department shall determine whether there is a need for an inspection of a health care institution and which components in subsection (A)(2) to include in an inspection, based on the health care institution’s application; previous inspections, if applicable; and the operating history of the health care institution and may conduct an announced inspection of the identified components:

1. Before issuing an initial, renewal, or modified designation to an owner applying for designation of a health care institution as a trauma center;
2. If an owner of a health care institution designated as a trauma center has submitted a

corrective action plan under subsection (E); or

3. A health care institution designated as a trauma center is randomly selected to receive an inspection.

C. If the Department has reason to believe that a trauma center is not complying with applicable requirements in A.R.S. Title 36, Chapter 21.1 and this Article, the Department may conduct an announced or unannounced inspection of the trauma center according to subsection (A).

D. Within 30 calendar days after completing an inspection, the Department shall send to an owner a written report of the Department's findings, including, if applicable, a list of any instances of non-compliance identified during the inspection and a request for a written corrective action plan.

E. Within 15 calendar days after receiving a request for a written corrective action plan, an owner shall submit to the Department a written corrective action plan that includes for each identified instance of non-compliance:

1. A description of how the instance of non-compliance will be corrected and reoccurrence prevented, and
2. A date of correction for the instance of non-compliance.

F. The Department shall accept a written corrective action plan if the corrective action plan:

1. Describes how each identified instance of non-compliance will be corrected and reoccurrence prevented, and
2. Includes a date for correcting each instance of non-compliance that is appropriate to the actions necessary to correct the instance of non-compliance.

G. If the Department reviews a health care institution's facility and documentation of capabilities during a national verification organization's assessment according to R9-25-1302(C)(3) and the health care institution is not issued verification from the national verification organization at the Level of designation sought, the Department shall send to an owner of the health care institution, within 30 calendar days after the review, a written report of the Department's findings, including, if applicable, a list of any instances of non-compliance with requirements in R9-25-1308 and Table 13.1 identified during the review.

H. A health care institution receiving a written report in subsection (G), containing a list of instances of non-compliance with requirements in R9-25-1308 and Table 13.1 identified during a review of the health care institution's facility and documentation of capabilities, may submit to the Department a written plan to correct instances of non-compliance that includes:

1. A description of how the health care institution will correct each instance of non-compliance and prevent the reoccurrence, and
2. A date by which the health care institution plans to correct each instance of

non-compliance.

R9-25-1307. Designation and Dedesignation (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. For initial designation or renewal of designation of a health care institution based on verification, the Department shall, within 45 calendar days after receiving a complete application from an owner:

1. ~~If~~ Except as provided in subsection (H)(2), if the application complies with the applicable requirements in this Article, issue a designation for the health care institution that is valid for the duration of the verification; or
2. If the application does not comply with the applicable requirements in this Article, provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10, that the Department intends to decline to issue a designation for the health care institution.

B. Except as provided in subsection (F) specifying requirements for renewal of a one-year designation, for initial designation or renewal of designation of a health care institution based on an assessment by a national verification organization, the Department shall, within 60 calendar days after receiving a complete application from an owner, review the application and, if the Department determines that:

1. The application and the health care institution comply with the applicable requirements in this Article, except as provided in subsection (H)(1), issue a designation for the health care institution that is valid for three years from the issue date;
2. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article, and the Department has accepted a written corrective action plan submitted according to R9-25-1306(E), issue a designation for the health care institution that is valid for one year from the issue date; or
3. The application or the health care institution does not comply with the applicable requirements in this Article, provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10, that the Department intends to decline to issue a designation for the health care institution.

C. Except as provided in subsection (F) specifying requirements for renewal of a one-year designation, for initial designation or renewal of designation of a health care institution as a Level III trauma center or a Level IV trauma center based on an assessment by the Department, an owner shall include as part of the application required in R9-25-1303(A):

1. The following information in a Department-provided format:

a. The name of the health care institution for which the owner is requesting designation;
b. The services the health care institution is providing or plans to provide as part of the trauma service;
c. The name and title of the liaison to the trauma service from each of the services listed according to subsection (C)(1)(b);
d. If applicable, the name, e-mail address, telephone number, and, if available, fax number of the health care institution's emergency department physician director;
e. If applicable, the name, e-mail address, telephone number, and, if available, fax number of the health care institution's surgical director or co-director;
f. If a multidisciplinary peer review committee is required according to Table 13.1 for the Level of the trauma center, the name and title of each member of the multidisciplinary peer review committee;
g. If the health care institution's trauma registry will be part of a centralized trauma registry, a description of the training provided to the trauma program manager to enable the trauma program manager to comply with R9-25-1308(D)(2);
h. If applicable, for an application for initial designation, a description of the health care institution's plans for the continuing education activities related to trauma care, required in R9-25-1308(G)(4);
i. For renewal of designation, a description of the continuing education activities conducted during the term of the designation;
j. If applicable, the name, e-mail address, telephone number, and, if available, fax number of the health care institution's injury prevention coordinator;
k. A description of the methods by which trauma team personnel members communicate with EMS personnel;
l. A description of the trauma-related training received by registered nurses in the intensive care unit;
m. An attestation that the owner of the health care institution will prohibit:
    i. The trauma medical director from serving as trauma medical director for another health care institution; and
    ii. A physician on-call for general surgery, neurosurgery, or orthopedic surgery to be on-call or on a back-up call list at another health care institution; and
n. The dated signature of the applicable individual according to R9-25-102;

2. A copy of the policies and procedures required in R9-25-1308(B)(6) for the health care institution's trauma registry;
3. A copy of the policies and procedures required in R9-25-1308(B)(7) for the health care institution's performance improvement program;
4. A copy of the policies and procedures required in R9-25-1308(F)(2) for the health care institution's trauma service;
5. If applicable, a copy of the policies and procedures required in R9-25-1308(F)(9) for operating rooms;
6. A copy of the applicable policies and procedures required in R9-25-1308(H)(4);
7. A copy of the health care institution's clinical practice guidelines, describing the health care institution's capability to resuscitate, stabilize, and transfer pediatric patients;
8. If applicable, a copy of the bylaws of the health care institution's multidisciplinary peer review committee;
9. Copies of the job descriptions for the health care institution's:
    a. Trauma program manager;
    b. Trauma registrar; and
    c. If applicable, injury prevention coordinator;
10. A list of the trauma care parameters the health care institution is or will be monitoring as part of the performance improvement program;
11. A list of trauma team members, including:
    a. Name,
    b. Title, and
    c. Role on the trauma team;
12. If required for an individual listed according to subsection (C)(11), a copy of documentation of the individual's:
    a. Board certification or board eligibility,
    b. Most recent certification in a trauma critical care course,
    c. Pediatric-specific credentials, and
    d. Other trauma-related training; and
13. If the trauma medical director is not a member of the trauma team, the applicable documentation required in subsection (C)(12) for the trauma medical director.

D. Except as provided in subsection (F) specifying requirements for renewal of a one-year designation, for initial designation or renewal of designation of a health care institution as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric

trauma center based on an assessment by the Department under R9-25-1302(C), an owner shall include as part of the application required in R9-25-1303(A):

1. A copy of the documentation submitted to the national verification organization as part of an application for verification;
2. If not included in the documentation in subsection (D)(1):
    a. Any information or documents required in subsection (C);
    b. For an application for initial designation, a description of the health care institution's plans for:
        i. Injury prevention activities, required in R9-25-1308(G)(5)(a); and
        ii. Educational outreach activities, required in R9-25-1308(G)(5)(b); and
    c. For an application for renewal of designation, a description of the injury prevention activities and educational outreach activities conducted during the term of the designation;
3. A copy of the national verification's organization's written report to the health care institution describing the results of the national verification organization's assessment of the health care organization;
4. A copy of the written report in R9-25-1306(G); and
5. If applicable, the written plan to correct instances of non-compliance in R9-25-1306(H).

E. Except for renewal of a one-year designation as provided in subsection (G) ~~for renewal of a one-year designation~~, for initial designation or renewal of designation of a health care institution based on an assessment by the Department according to subsection (C) or (D), the Department shall, within 90 calendar days after receiving a complete application from an owner, review the application, inspect the health care institution, if applicable, and, if the Department determines that:

1. The application and the health care institution comply with the applicable requirements in this Article, except as provided in subsection (H)(1), issue a designation for the health care institution that is valid for three years from the issue date;
2. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article, and the Department has accepted the document submitted according to R9-25-1306(E) or subsection (D)(5), issue a designation for the health care institution that is valid for one year from the issue date; or
3. The application or the health care institution does not comply with the applicable requirements in this Article, provide a written notice that complies with A.R.S. Title 41,

Chapter 6, Article 10, that the Department intends to decline to issue a designation for the health care institution.

F. For renewal, at the same Level of trauma center, of a one-year designation issued according to subsection (B)(2) or (E)(2), an owner shall include, as part of the application required in R9-25-1303(A), documentation related to the completion of the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2).

G. ~~Except as specified in subsection (H), the~~ The Department shall, within 60 calendar days after receiving from an owner an application submitted according to subsection (F), review the information and documentation, inspect the health care institution if applicable, and:

1. Issue a designation for the health care institution that is valid for two years from the issue date if the Department determines that:
   a. The application and the health care institution comply with the applicable requirements in this Article; and
   b. The owner has completed the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2), as applicable; or
2. Provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10, that the Department intends to decline to issue a designation for the health care institution if the Department determines that:
   a. The application or the health care institution do not comply with the applicable requirements in this Article; or
   b. The owner has not completed all of the components of the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2), as applicable.

~~**H.** The Department shall review according to R9-25-1303(C) and subsection (A), (B), or (E), as applicable, an application for renewal of designation submitted by the owner of a trauma center that:~~

~~1. Had been issued a one-year designation according to subsection (B)(2) or (E)(2); and~~

~~2. Has not completed all of the components of the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2), as applicable.~~

H. The Department may:

1. Issue or extend a designation to a health care institution that is longer than three years if:
   a. The health care institution would be eligible for designation under R9-25-1302(A)(2)(a)(ii) or (iii), (A)(2)(b)(ii) or (iii), (A)(2)(c)(ii) or (iii), (A)(2)(d)(ii) or (iii), or (A)(2)(e)(ii) with assessment from a national verification

organization;

b. The national verification organization either:

i. Will not allow the health care institution to apply for verification within the time-frame necessary to comply with R9-25-1302(C), or

ii. Does not schedule an assessment visit to the health care institution within six months after the date of the health care institution's request;

c. The health care institution and, if applicable, the application comply with the applicable requirements in this Article; and

d. The health care institution provides to the Department documentation supporting subsection (H)(1)(b); or

2. Issue a designation based on verification to a health care institution, according to subsection (A)(1), that is shorter than the duration of the verification if the expiration of the verification is more than five years after the date of issuance.

I. For modification of a designation according to R9-25-1305, the Department shall, within 30 calendar days after receiving a complete application for modification in R9-25-1305(A) from an owner, review the application, inspect the health care institution, if applicable, and:

1. Issue a modified designation for the Level of designation requested for the health care institution that is valid for the duration of the original designation or one year from the issue date, whichever is longer, if the Department determines that:

a. The application and the health care institution comply with the applicable requirements in this Article for the Level of designation requested; or

b. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article for the Level of designation requested, and the Department has accepted a written corrective action plan submitted according to R9-25-1306(E);

2. Issue a modified designation for a lower Level of designation than the Level of designation requested for the health care institution that is valid for the duration of the original designation or one year from the issue date, whichever is longer, if the Department determines that:

a. The application and the health care institution comply with the applicable requirements in this Article for the lower Level of designation and the health care institution:

i. Does not comply with the applicable requirements in this Article for the

Level of designation requested; or

ii. Is in substantial compliance with the applicable requirements in this Article for the Level of designation requested, and the Department has not accepted a written corrective action plan submitted according to R9-25-1306(E); or

b. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article for the lower Level of designation, and the Department has accepted a written corrective action plan according to R9-25-1306(E); or

3. Provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10 that the Department intends to decline to issue a modified designation for the health care institution if the Department determines that the application or the health care institution does not comply with the applicable requirements in this Article.

J. The Department may dedesignate a health care institution as a trauma center if an owner:

1. Has provided false or misleading information to the Department;
2. Is not eligible for designation under R9-25-1302(A) or (B); or
3. Fails to comply with an applicable requirement in A.R.S. Title 36, Chapter 21.1 or this Article.

K. In determining whether to dedesignate a health care institution as a trauma center, the Department shall consider:

1. The severity of each instance relative to public health and safety;
2. The number of instances;
3. The nature and circumstances of each instance;
4. Whether each instance was corrected, the manner of correction, and the duration of the instance; and
5. Whether the instances indicate a lack of commitment to having the trauma center meet the verification standards of a national verification organization or, if applicable, the standards specified in R9-25-1308 and Table 13.1.

L. If the Department intends to dedesignate a health care institution, the Department shall send to the owner a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10.

M. An owner who receives a written notice in subsection (A)(2), (B)(3), (E)(3), (G)(2), (I)(3), or (J) may file a written notice of appeal with the Department that complies with A.R.S. Title 41, Chapter 6, Article 10.

R9-25-1308. Trauma Center Responsibilities (A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(4), (5), and (6))

A. The owner of a trauma center shall ensure that:

1. If designation is based on:
   a. Verification, the trauma center meets the applicable standards of the verifying national verification organization; or
   b. Meeting the applicable standards specified in this Section and Table 13.1, the trauma center meets the applicable standards for the Level of trauma center for which designation has been issued;
2. The trauma center complies with a written corrective action plan accepted by the Department according to R9-25-1306(F); and
3. The Department has access to:
   a. The trauma center and to personnel members present in the trauma center; and
   b. Documents that are requested by the Department and not confidential under A.R.S. Title 36, Chapter 4, Article 4 or 5, within two hours after the Department's request.

B. The owner of a trauma center shall ensure that the trauma center:

1. Except as provided in subsection (D), establishes a trauma registry of patients receiving trauma care who meet the criteria specified in subsection (C)(1) that contains the information required in R9-25-1309, as applicable for the specific Level of the trauma center;
2. ~~Appoint~~ Appoints an individual to act as trauma registrar to coordinate trauma registry activities;
3. If necessary to comply with subsections (C)(2) and (3), provides sufficient additional individuals to assist with trauma registry activities;
4. Establishes a performance improvement program for the trauma service to develop and implement processes to improve trauma care parameters;
5. If required according to Table 13.1 for the Level of the trauma center, establishes as part of the performance improvement program, established according to subsection (B)(4), a multidisciplinary peer review committee to review the quality of trauma care provided by the trauma center, including information from the trauma registry, and suggest methods to improve the quality of trauma care;
6. Establishes, documents, and implements policies and procedures for the trauma registry

established according to subsection (B)(1) that include:

a. Ensuring that individuals responsible for collecting, entering, or reviewing information in the trauma registry have received training in gaining access to, and retrieving information from, the trauma registry;

b. Collection of the information required in R9-25-1309 about the patients specified in subsection (C)(1) receiving trauma care;

c. Submission to the Department of the information required in subsection (C)(2);

d. Review of information in the trauma center's trauma registry; and

e. Performance improvement activities required in R9-25-1310; and

7. Establishes, documents, and implements policies and procedures for the performance improvement program established according to subsection (B)(4), including:

a. A list of the positions of personnel members who have defined roles in the performance improvement program and, if applicable, a list of positions that are dedicated to performance improvement activities for patients receiving trauma care from the trauma center;

b. The qualifications, skills, and knowledge required of the personnel members in the positions specified according to subsection ~~(B)(6)(a)~~ (B)(7)(a);

c. The role each personnel member specified according to subsection ~~(B)(6)(a)~~ (B)(7)(a) plays in the performance improvement program;

d. The trauma care parameters to be reviewed as part of the performance improvement program;

e. The frequency of review of trauma care parameters;

f. If an issue related to trauma care or to trauma care parameters is identified:

i. How a plan to address the issue is developed to reduce the chance of the issue recurring in the future;

ii. How the plan is documented;

iii. The mechanism and criteria by which the plan is reviewed and approved;

iv. How the plan is implemented; and

v. How implementation of the plan and future recurrences are monitored;

g. If applicable, the composition, duties, responsibilities, and frequency of meetings of the multidisciplinary peer review committee established according to subsection (B)(5);

h. If applicable, how the multidisciplinary peer review committee collaborates with the trauma center's quality management program; and

i. How changes proposed by the performance improvement program are reviewed by the trauma center's quality management program.

C. The owner of a trauma center shall ensure that:

1. The trauma registry, established according to subsection (B)(1), includes the information required in R9-25-1309 for each patient with whom the trauma center had contact who meets one or more of the following criteria:
   a. A patient with injury or suspected injury who is:
      i. Transported from a scene to a trauma center or an emergency department based on the responding emergency medical services provider's or ambulance service's triage protocol required in R9-25-201(E)(2)(b), or
      ii. Transferred from one health care institution to another health care institution by an emergency medical services provider or ambulance service;
   b. A patient with injury or suspected injury for whom a trauma team activation occurs; or
   c. A patient with injury, who is admitted as a result of the injury or who dies as a result of the injury, and whose medical record includes one or more of specific ICD-codes indicating that:
      i. At the initial encounter with the patient, the patient had:
         (1) An injury or injuries to specific body parts,
         (2) Unspecified multiple injuries,
         (3) Injury of an unspecified body region,
         (4) A burn or burns to specific body parts,
         (5) Burns assessed through Total Body Surface Area percentages, or
         (6) Traumatic Compartment Syndrome; and
      ii. The patient's injuries or burns were not only:
         (1) An isolated distal extremity fracture from a same-level fall,
         (2) An isolated femoral neck fracture from a same-level fall,
         (3) Effects resulting from an injury or burn that developed after the initial encounter,
         (4) A superficial injury or contusion, or
         (5) A foreign body entering through an orifice;
2. The following information is submitted to the Department, in a Department-provided format, according to subsection (C)(3):

a. The name and physical address of the trauma center;

b. The date the trauma registry information is being submitted to the Department;

c. The total number of patients whose trauma registry information is being submitted;

d. The quarter and year for which the trauma registry information is being submitted;

e. The range of emergency department or hospital arrival dates for the patients for whom trauma registry information is being submitted;

f. The name, title, e-mail address, telephone number, and, if available, fax number of the trauma center's point of contact for the trauma registry information;

g. Any special instructions or comments to the Department from the trauma center's point of contact;

h. The information from the trauma registry for patients identified during the quarter specified according to subsection (C)(2)(d); and

i. Updated information for any patients identified during the previous quarter, including the patient's name, medical record number, and admission date; and

3. The information required in subsection (C)(2) is submitted:

a. For patients identified between January 1 and March 31, so that the information in subsections (C)(2)(a) through (h) is received by the Department by July 1 of the same calendar year;

b. For patients identified between April 1 and June 30, so that the information in subsections (C)(2)(a) through (h) is received by the Department by October 1 of the same calendar year;

c. For patients identified between July 1 and September 30, so that the information in subsections (C)(2)(a) through (h) is received by the Department by January 2 of the following calendar year; and

d. For patients identified between October 1 and December 31, so that the information in subsections (C)(2)(a) through (h) is received by the Department by April 1 of the following calendar year.

D. Trauma centers under the same governing authority, as defined in A.R.S. § 36-401, may establish a single, centralized trauma registry and submit to the Department consolidated information from the trauma registry, according to subsections (C)(2) and (3), if:

1. The information submitted to the Department specifies for each patient in the trauma registry the trauma center that had contact with the patient~~;~~ and

2. Each trauma center contributing information to the centralized trauma registry is able to:
    a. Access, edit, and update the information contributed by the trauma center to the centralized trauma registry; and
    b. Use the information contributed by the trauma center to the centralized trauma registry when complying with performance improvement program requirements in this Section.

E. As part of the performance improvement program, the owner of a trauma center shall ensure that the trauma program manager and, if applicable, trauma medical director periodically, according to policies and procedures:

1. Review the information in the trauma center's trauma registry; and
2. Monitor at least the following trauma care parameters, as applicable, for patients in the trauma registry:
    a. EMS received by a patient;
    b. Length of stay longer than two hours in the emergency department before transfer;
    c. Instances of trauma team activation to determine if trauma team activation was timely and appropriate;
    d. Instances where trauma care was provided to a patient but trauma team activation did not occur;
    e. Time from notification of a surgeon on the trauma team that a patient described in subsection (H)(6)(b)(i) is in the emergency department to when the surgeon arrives in the emergency department;
    f. Documentation of the nursing services provided to a patient;
    g. Instances and reasons for transfer of a patient;
    h. Instances and reasons for transfer to a hospital not designated as a trauma center;
    i. For a hospital designated as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, instances and reasons for diversion, as defined in A.A.C. R9-10-201, of a patient requiring trauma care;
    j. Instances of and circumstances related to the death of a patient;
    k. Instances related to the assessment of child maltreatment;
    ~~k.~~l. Other patient outcomes;
    ~~l.~~m. Trauma care parameters for pediatric patients, including pediatric-specific measures; and

~~m.~~n. The completeness and timeliness of trauma data submission.

F. In addition to the requirements in subsections (A) through (E), the owner of a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 shall:

1. Ensure that a trauma service is established if required by Table 13.1;
2. Ensure that policies and procedures for the trauma service are established, documented, and implemented that include:
    a. The composition of the trauma team;
    b. The qualifications, skills, and knowledge required of each personnel member of the trauma team;
    c. Continuing education or continuing medical education requirements for each personnel member of the trauma team;
    d. The roles and responsibilities of each personnel member of the trauma team;
    e. Under what circumstances the trauma team is activated; and
    f. How the trauma team is activated;
3. Ensure that the personnel members on the trauma team have the qualifications, skills, and knowledge required in the policies and procedures;
4. If the trauma center is required according to Table 13.1 to have a trauma medical director, appoint a board-certified or board-eligible surgeon as trauma medical director;
5. Prohibit a physician from serving as trauma medical director for the trauma center if the physician is serving as trauma medical director for another health care institution;
6. Ensure that the trauma medical director completes:
    a. If the trauma center's designation is for a three-year period, at least 48 hours of external trauma-related continuing medical education during the term of the designation;
    b. If the trauma center's designation is for a one-year period, at least 16 hours of external trauma-related continuing medical education during the term of the designation; and
    c. If the trauma center is designated as a Level I Pediatric trauma center or Level II Pediatric trauma center, at least 12 of the 48 hours required in subsection (F)(6)(a) or four of the 16 hours required in subsection (F)(6)(b) in pediatric trauma-related continuing medical education;
7. Appoint an individual to act as trauma program manager to coordinate trauma service activities;

8. If the trauma center is required by Table 13.1 to have a multidisciplinary peer review committee, ensure that each surgeon on the trauma team designated according to subsection (F)(3) attends at least 50% of the meetings of the multidisciplinary peer review committee;

9. If the trauma center provides surgical services, ensure that policies and procedures for operating rooms and an operating room team are established, documented, and implemented that include:
    a. The availability of an operating room for trauma care;
    b. The composition of an operating room team;
    c. The qualifications, skills, and knowledge required of each personnel member of an operating room team;
    d. The roles and responsibilities of each personnel member of an operating room team;
    e. If an operating room team is not on the premises of the health care institution 24 hours a day, under what circumstances the operating room team is notified to come to the trauma center; and
    f. How the operating room team is notified;

10. Ensure that the following personnel members on the trauma team:
    a. Hold current certification in a trauma critical care course:
        i. Trauma medical director, if applicable;
        ii. Each emergency medicine physician who is not board-certified or board-eligible; and
        iii. Each physician assistant or registered nurse practitioner who is responsible for <u>providing trauma care to</u> patients in an emergency department in the absence of an emergency physician; or
    b. Have held certification in a trauma critical care course:
        i. Each general surgeon other than the trauma medical director, and
        ii. Each emergency medicine physician who is board-certified or board-eligible;

11. If the trauma center is designated as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, ensure that each of the trauma team personnel members required in Table 13.1(C)(2) and (C)(3)(a) through (f) are board-certified or board-eligible;

12. If the trauma center is designated as a Level I Pediatric trauma center, ensure that the

following trauma team members are fellowship-trained:

a. The surgeon credentialed for pediatric trauma care required in Table 13.1(C)(2)(a)(iii),

b. The pediatric emergency medicine physician required in Table 13.1(C)(2)(c),

c. The pediatric-credentialed orthopedic surgeon required in Table 13.1(C)(3)(b),

d. The pediatric-credentialed neurosurgeon required in Table 13.1(C)(3)(d), and

e. The pediatric-credentialed critical care medicine physician required in Table 13.1(C)(3)(f);

13. If the trauma center is designated as a Level II Pediatric trauma center, ensure that:

a. The pediatric-credentialed critical care medicine physician required in Table 13.1(C)(3)(f) is fellowship-trained, and

b. A fellowship-trained pediatric emergency medicine physician:

i. ~~provides supervision~~ Provides direction for pediatric emergency trauma care and oversight of the treatment of pediatric patients as part of the performance improvement program, and

ii. ~~is~~ Is appointed as a liaison to the multidisciplinary peer review committee established according to subsection (B)(5); and

14. If the trauma center is not designated as a Level I Pediatric trauma center or Level II Pediatric trauma center and annually provides trauma care to 100 or more injured children younger than 15 years of age who meet one or more of the criteria in subsection (C)(1)(c), ensure that the trauma center:

a. Complies with subsection (F)(13) and Table 13.1(C)(2)(a)(iii), (3)(b), (3)(d), and (3)(f) and (F)(2); and

b. Has a:

i. Pediatric emergency department area,

ii. Pediatric intensive care area, and

iii. Pediatric-specific trauma performance improvement program.

G. In addition to the requirements in subsections (A) through (E), the owner of a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 shall ensure that the trauma center:

1. Establishes, documents, and implements a patient transfer plan, consistent with A.A.C. R9-10-211, that ~~include~~ includes:

a. The criteria for transferring a patient,

b. The health care institution to which a patient meeting specific criteria will be

transferred,

c. The personnel members who are responsible for coordinating the transfer of a patient, and

d. The process for transferring a patient;

2. Participates in state, local, or regional trauma-related activities such as:

a. The State Trauma Advisory Board, established by A.R.S. § 36-2222;

b. A regional emergency medical services coordinating council described in A.R.S. § 36-2222(A)(3);

c. Trauma Registry Users Group, established by the Department;

d. Trauma Managers Workgroup, established by the Department; or

e. Injury Prevention Council;

3. Participates in injury prevention programs specific to the trauma center's patient population at the national, regional, state, or local levels;

4. Except for a Level IV trauma center, conducts trauma care continuing education activities for physicians, trauma center personnel members, and EMCTs;

5. If required for the trauma center ~~holds a designation as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center~~ according to Table 13.1, establishes and maintains:

a. An injury prevention program:

i. Independently or in collaboration with other health care institutions, health advocacy groups, or the Department; and

ii. That includes:

(1) Designating a prevention coordinator who serves as the trauma center's representative for injury prevention and injury control activities;

(2) Carrying out injury prevention and injury control activities, including activities specific to the patient population;

(3) Conducting injury control studies;

(4) Monitoring the progress and effect of the injury prevention program; and

(5) Providing injury prevention and injury control information resources for the public; and

b. An educational outreach program:

i. Independently or in collaboration with other health care institutions,

health advocacy groups, or the Department;

ii. That includes providing education to physicians, trauma center personnel members, EMCTs, and the general public; and

iii. That may include education about:

(1) Injury prevention,

(2) Trauma care,

(3) Other topics specific to the patient population,

(4) Criteria for assessing a patient who may require trauma care, and

(5) Criteria for the transfer of a patient requiring trauma care; and

6. If the trauma center holds a designation as a Level I trauma center or Level I Pediatric trauma center:

a. Establishes and maintains, either independently or in collaboration with other hospitals, a residency program or fellowship program that provides advanced medical training in emergency medicine, general surgery, orthopedic surgery, or neurosurgery;

b. Participates in the provision of a trauma critical care course;

c. Conducts or participates in research related to trauma and trauma care; and

d. Maintains an Institutional Review Board, established consistent with 45 CFR Part 46, to review biomedical and behavioral research related to trauma and trauma care involving human subjects, conducted, funded, or sponsored by the trauma center, in order to protect the rights of the human subjects of such research.

H. In addition to the requirements in subsections (A) through (E), the owner of a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 shall:

1. Ensure the presence of a surgeon at all operative procedures;

2. If the trauma center provides emergency medicine, neurosurgery, orthopedic surgery, anesthesiology, critical care, or radiology as an organized service, ensure that:

a. A physician from the organized service is appointed to act as a liaison between the organized service and the trauma center's trauma service;

b. The physician in subsection (H)(2)(a) completes:

i. If the trauma center's designation is for a three-year period, at least 48 hours of trauma-related continuing medical education during the term of the designation;

ii. If the trauma center's designation is for a one-year period, at least 16

hours of trauma-related continuing medical education during the term of the designation; and

iii. If the trauma center is designated as a Level I Pediatric trauma center or Level II Pediatric trauma center, at least 12 of the 48 hours required in subsection (H)(2)(b)(i) or four of the 16 hours required in subsection (H)(2)(b)(ii) in pediatric trauma-related continuing medical education; and

c. If the trauma center is required by Table 13.1 to have a multidisciplinary peer review committee, ensure the physician in subsection (H)(2)(a) attends at least 50% of the meetings of the multidisciplinary peer review committee;

3. Ensure that, when a physician is on-call for general surgery, neurosurgery, or orthopedic surgery, the physician is not on-call or on a back-up call list at another health care institution;

4. Ensure that policies and procedures are established, documented, and implemented for:

a. Except for a Level IV trauma center, the formulation of blood products to be available during an event requiring multiple blood transfusions for a patient or patients; and

b. For a Level IV trauma center, the expedited release of blood products during an event requiring multiple blood transfusions for a patient or patients;

5. Ensure that the patient transfer plan required in subsection (G)(1) includes processes for transferring a patient needing:

a. Acute hemodialysis or pediatric trauma care to a hospital providing the required service if the trauma center is designated as a:

i. Level III or Level IV trauma center; or

ii. Level II trauma center and does not provide, as applicable, acute hemodialysis or pediatric trauma care;

b. Burn care as an organized service, acute spinal cord management, microvascular surgery, or replant surgery to a hospital providing the required service if the trauma center is designated as a:

i. Level III or Level IV trauma center; or

ii. Level I or Level II trauma center and does not provide, as applicable, burn care as an organized service, acute spinal cord management, microvascular surgery, or replant surgery; or

c. Another service that the trauma center is not authorized or not able to provide to

a hospital providing the required service;

6. Except for a Level IV trauma center or as provided in subsection (I), require that:

   a. An emergency medicine physician is present in the emergency department at all times;

   b. A surgeon on the trauma team is present in the emergency department:

      i. For a patient:

         (1) If an adult, with a systolic blood pressure less than 90 mm Hg or, if a child, with confirmed age-specific hypotension;

         (2) With respiratory compromise, respiratory obstruction, or intubation;

         (3) Who is transferred from another hospital and is receiving blood to maintain vital signs;

         (4) Who has a gunshot wound to the abdomen, neck, or chest;

         (5) Who has a Glasgow Coma Scale score less than 8 associated with an injury attributed to trauma; or

         (6) Who is determined by an emergency department physician to have an injury that has the potential to cause prolonged disability or death; and

      ii. No later than the following times:

         (1) For a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, within 15 minutes after notification or at the time the patient arrives in the emergency department, whichever is later; or

         (2) For a Level III trauma center, within 30 minutes after notification or at the time the patient arrives in the emergency department, whichever is later; and

   c. One of the following anesthesia personnel members is available for an operative procedure on a patient at the indicated time point:

      i. For a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, an anesthesiologist, anesthesiology chief resident, or certified registered nurse anesthetist is present in the emergency department or in an operating room area awaiting the patient no later than 15 minutes after patient arrival in the emergency department; and

ii. For a Level III trauma center, an anesthesiologist, anesthesiology chief resident, or certified registered nurse anesthetist is present in the emergency department or in an operating room area awaiting the patient no later than 30 minutes after patient arrival in the emergency department;

7. For a clinical capability required for the trauma center according to Table 13.1(C)(3), require that the on-call radiologist, critical care medicine physician, or surgical specialist is available to provide medical services, as applicable to the specialist, for a patient requiring trauma care within 45 minutes after notification; and

8. For personnel members assigned to an operating room team according to subsection (F)(9), require that the personnel members on the operating room team are on the premises of the trauma center while on duty or:

a. For a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, Level II Pediatric trauma center:

i. Are available to provide operative services for a patient requiring trauma care within 15 minutes after notification or patient arrival at the trauma center, whichever is later; and

ii. Have response times and patient outcomes monitored through the performance improvement program; and

b. For a Level III trauma center or Level IV trauma center, if the Level IV trauma center provides surgical services:

i. Are available to provide operative services for a patient requiring trauma care within 30 minutes after notification or patient arrival at the trauma center, whichever is later; and

ii. Have response times and patient outcomes monitored through the performance improvement program.

I. The Department shall consider a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 to be in compliance with subsection (H)(6)(a), (b), or (c), as applicable, if the trauma center has documentation showing that:

1. The individual required to be present at the indicated location and within the indicated time period was present 80% or more of the time, and

2. The trauma center monitors the rate of compliance with subsection (H)(6) and patient outcomes through the performance improvement program.

J. The requirement in subsection (H)(6)(b) applies whether or not the owner of a trauma center

allows a surgery resident in the fourth or fifth year of residency training to begin treating a patient described in subsection (H)(6)(b)(i) while awaiting the arrival of the surgeon on the trauma team, as required in subsection (H)(6)(b)(ii)(1) or (2).

K. An ALS base hospital certificate holder that chooses to submit trauma registry information to the Department, as allowed by A.R.S. § 36-2221(A), shall:

1. Include in the ALS base hospital's trauma registry at least the information required in R9-25-1309(A) for each patient who meets one or more of the criteria in subsections (C)(1)(a) through (c), and
2. Comply with the submission requirements in subsections (C)(2) and (3).

Table 13.1. Arizona Trauma Center Standards (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

Key:

E = Essential and required
I(P) = Level I Pediatric trauma center
II(P) = Level II Pediatric trauma center
ICU = Intensive care unit
In-house = On the premises of the health care institution
ISS = Injury severity score, the sum of the squares of the abbreviated injury scale scores of the three most severely injured body regions
Child life = A program of support to injured children and their families to reduce stress and anxiety by:
a. Explaining medical equipment and procedures to children in a non-threatening and age-appropriate manner,
b. Explaining a diagnosis to a child in an age-appropriate manner, and
c. Helping children and their families develop strategies to cope with the diagnosis and expected outcome

Trauma Facilities Criteria	Levels					
	I	**I(P)**	**II**	**II(P)**	**III**	**IV**
A. Institutional Organization						
1. Trauma service	E	E	E	E	E	-
2. Trauma ~~program~~ medical director	E	E	E	E	E	-
3. Trauma multidisciplinary peer review committee	E	E	E	E	E	-
4. Injury prevention program (R9-25-1308(G)(5)(a))	E	E	E	E	-	-
5. Injury prevention activities (R9-25-1308(G)(3))	E	E	E	E	E	E
6. Educational outreach program (R9-25-1308(G)(5)(b))	E	E	E	E	-	-
7. Educational outreach activities (R9-25-1308(G)(4))	E	E	E	E	E	-
8. Child maltreatment assessment capability	E	E	E	E	E	E
B. Hospital Departments/Divisions/Sections						
1. Surgery	E	E	E	E	E	-
2. Neurosurgery	E	E	E	E	-	-
3. Orthopedic surgery	E	E	E	E	E	-
4. Emergency medicine	E	E	E	E	E	-
5. Pediatric emergency department area	-	E	-	E	-	-
6. Anesthesia	E	E	E	E	E	-
C. Clinical Capabilities						
1. Written on-call schedule for each component of the trauma service if a team member is not in-house	E	E	E	E	E	E
2. Physician specialist available 24 hours/day						
a. General surgeon	E	E	E	E	E	-
i. Published back-up schedule	E	E	E	E	-	-
ii. Dedicated to single hospital when on-call	E	E	E	E	-	-

iii. Surgeon credentialed for pediatric trauma care	-	E	-	E	-	-
b. Emergency medicine physician	E	E	E	E	E	-
c. Pediatric emergency medicine physician	-	E	-	-	-	-
3. Specialist on-call and available 24 hours/day						
a. Orthopedic surgeon	E	E	E	E	E	-
b. Pediatric-credentialed orthopedic surgeon	-	E	-	E	-	-
c. Neurosurgeon	E	E	E	E	-	-
d. Pediatric-credentialed neurosurgeon	-	E	-	E	-	-
e. Critical care medicine physician	E	E	E	E	-	-
f. Pediatric-credentialed critical care medicine physician	-	E	-	E	-	-
g. Radiologist	E	E	E	E	E	
h. Hand surgeon	E	E	E	E	-	-
i. Ophthalmic surgeon	E	E	E	E	-	-
j. Plastic surgeon	E	E	E	E	-	-
k. Thoracic surgeon	E	E	E	E	-	-
l. Cardiac surgeon	E	E	-	-	-	-
m. Obstetrics/gynecologic surgeon	E	E	-	-	-	-
n. Oral/maxillofacial surgeon (plastic surgeon, otolaryngologist, or oral/maxillofacial surgeon)	E	E	E	E	-	-
4. Qualified anesthesia personnel member on-call and available 24 hours/day						
a. Physician or certified nurse anesthetist	E	E	E	E	E	-
b. Physician or certified nurse anesthetist with a pediatric credential	-	E	-	E	-	-
5. Volume performance standards:						
a. 1200 trauma admissions per year, b. 240 admissions with ISS > 15 per year, or c. Average of 35 patients with ISS > 15 for each trauma team surgeon per year	E	-	-	-	-	-
d. 200 trauma admissions < 15 years of age per year,	-	E	-	-	-	-
D. Facilities/Resources/Capabilities						
1. Emergency department						
a. Designated physician director	E	E	E	E	E	-
b. Personnel members with pediatric-specific trauma-related training	-	E	-	E	-	-
c. Resuscitation equipment for patients of all sizes						
i. Airway control and ventilation equipment	E	E	E	E	E	E
ii. Pulse oximetry	E	E	E	E	E	E

iii. Suction devices	E	E	E	E	E	E
iv. Electrocardiograph-oscilloscope-defibrillator	E	E	E	E	E	E
v. Color-coded, length-based tool to assist with medication dosing and equipment selection for children	E	E	E	E	E	E
vi. Central venous pressure monitoring equipment	E	E	E	E	E	-
vii. Standard intravenous fluids and administration sets	E	E	E	E	E	E
viii. Large-bore intravenous catheters	E	E	E	E	E	E
ix. Sterile surgical sets for:						
(1) Airway control/cricothyrotomy	E	E	E	E	E	E
(2) Thoracostomy	E	E	E	E	E	E
(3) Central line insertion	E	E	E	E	E	-
(4) Thoracotomy	E	E	E	E	E	-
x. Arterial catheters	E	E	E	E	-	-
xi. X-ray availability 24 hours/day	E	E	E	E	E	-
xii. Thermal control equipment						
(1) For patient	E	E	E	E	E	E
(2) For fluids and blood	E	E	E	E	E	E
xiii. Rapid infusion system/capability	E	E	E	E	E	E
xiv. Qualitative end-tidal CO_2 monitoring	E	E	E	E	E	E
d. Communication with EMS personnel	E	E	E	E	E	E
e. Capability to resuscitate, stabilize, and transfer pediatric patients	E	E	E	E	E	E
2. Operating room						
a. Immediately available 24 hours/day	E	E	E	E	-	-
b. Size-specific equipment						
i. Cardiopulmonary bypass	E	E	-	-	-	-
ii. Operating microscope	E	E	-	-	-	-
c. Thermal control equipment						
i. For patient	E	E	E	E	E	E
ii. For fluids and blood	E	E	E	E	E	E
d. X-ray capability including C-arm image intensifier	E	E	E	E	E	-
e. Endoscopes, bronchoscope	E	E	E	E	E	-
g. Craniotomy instruments	E	E	E	E	-	-
h. Equipment for long bone and pelvic fixation	E	E	E	E	E	-

i. Rapid infusion system/capability	E	E	E	E	E	E
3. Postanesthesia recovery room or surgical ICU						
a. Registered nurses available 24 hours/day	E	E	E	E	E	E
b. Equipment for monitoring and resuscitation	E	E	E	E	E	E
c. Intracranial pressure monitoring equipment	E	E	E	E	-	-
d. Pulse oximetry	E	E	E	E	E	E
e. Thermal control equipment						
i. For patient	E	E	E	E	E	E
ii. For fluids and blood	E	E	E	E	E	E
4. ICU or critical care unit for injured patients						
a. Pediatric ICU	-	E	-	E	-	-
b. Registered nurses with trauma-related training	E	E	E	E	E	-
c. Registered nurses with pediatric-specific trauma-related training	-	E	-	E	-	-
d. Designated surgical director or surgical co-director	E	E	E	E	E	-
e. Physician (fourth year of residency training or higher) assigned to surgical ICU service and in-house 24 hours/day	E	E	-	-	-	-
f. Physician (fourth year of residency training or higher) with a pediatric credential assigned to surgical ICU service and in-house 24 hours/day	-	E	-	-	-	-
g. Surgically directed and staffed ICU service	E	E	E	E	-	-
h. Equipment for monitoring and resuscitation	E	E	E	E	E	-
i. Intracranial pressure monitoring equipment	E	E	E	E	-	-
5. Respiratory therapy services (Available 24 hours/day)						
a. Available in-house	E	E	E	E	-	-
b. On-call and available within 45 minutes after notification	-	-	-	-	E	-
6. Radiological services (Available 24 hours/day)						
a. In-house radiology technologist	E	E	E	E	-E	-
b. Radiology technologist on-call and available within 45 minutes after notification	-	-	-	-	-	E
c. Resuscitation equipment for patients of all sizes, as specified in subsection (D)(1)(c)(i) to (v)	E	E	E	E	E	E
d. Angiography	E	E	E	E	-	-
e. Sonography	E	E	E	E	E	-
f. Computed tomography (CT)	E	E	E	E	E	-
i. In-house CT technician	E	E	E	E	-	-

	ii. CT technician on-call and available within 45 minutes after notification	-	-	-	-	E	-
f.	Magnetic resonance imaging	E	E	E	E	-	-
7.	Clinical laboratory service (Available 24 hours/day)						
a.	Standard analyses of blood, urine, and other body fluids	E	E	E	E	E	E
b.	Blood typing and cross-matching	E	E	E	E	E	-
c.	Coagulation studies	E	E	E	E	E	E
d.	Comprehensive blood bank or access to a community central blood bank and adequate storage facilities	E	E	E	E	E	-
e.	Blood gases and pH determinations	E	E	E	E	E	E
f.	Microbiology	E	E	E	E	E	-
~~8.~~	~~Child maltreatment assessment capability~~	~~E~~	~~E~~	~~E~~	~~E~~	~~E~~	~~E~~
E.	**Rehabilitation Services Specific to the Patient Population**						
1.	Physical therapy	E	E	E	E	E	-
2.	Occupational therapy	E	E	E	E	-	-
3.	Speech therapy	E	E	E	E	-	-
F.	**Social Services Specific to the Patient Population**						
1.	Social services	E	E	E	E	E	-
2.	Child life program	-	E	-	E	-	-
G.	**Performance Improvement**						
1.	Multidisciplinary peer review committee	E	E	E	E	E	-
2.	Performance improvement personnel dedicated to the trauma service	E	E	E	E	-	-

Current Rules in 9 A.A.C. 25, Article 13, as of January 1, 2018

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

ARTICLE 13. TRAUMA CENTERS AND TRAUMA REGISTRIES

ARTICLE 13. TRAUMA CENTERS AND TRAUMA REGISTRIES

R9-25-1301. Definitions (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in this Article, unless otherwise specified:

1. "Admitted" means when a patient is either:
   a. Held for observation of a trauma-related injury; or
   b. Considered an inpatient, as defined in A.A.C. R9-10-201.
2. "Business day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.
3. "Designation" means a formal determination by the Department that a health care institution complies with requirements in A.R.S. § 36-2225 and this Article for providing a particular Level of trauma service.
4. "Emergency department" means a designated area of a hospital that provides emergency services, as defined in A.A.C. R9-10-201, as an organized service, 24 hours per day, seven days per week, to individuals who present for immediate medical services.
5. "ICD-code" means an International Classification of Diseases code, a set of numbers or letters or a combination of letters and numbers that specify a disease, condition, or injury; the location of the disease, condition, or injury; or the circumstances under which a patient may have incurred the disease, condition, or injury, which is used by a health care institution for billing purposes.
6. "Level I Pediatric trauma center" means a Level I trauma center that has a trauma service specifically intended to meet the needs of children requiring trauma care.
7. "Level II Pediatric trauma center" means a Level II trauma center that has a trauma service specifically intended to meet the needs of children requiring trauma care.
8. "Medical services" means the services pertaining to the "practice of medicine," as defined in A.R.S. § 32-1401, or "medicine," as defined in A.R.S. § 32-1800, performed at the direction of a physician.
9. "National verification organization" has the same meaning as in A.R.S. § 36-2225.
10. "Nursing services" means services that pertain to the curative, restorative, and preventive aspects of "registered nursing," as defined in A.R.S. § 32-1601, performed:
    a. At the direction of a physician; and
    b. By or under the supervision of a registered nurse licensed:
       i. According to Title 32, Chapter 15; or

ii. When performed in a health care institution operating under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation, by a similar licensing board in another state.

11. "On-call" means assigned to respond and, if necessary, come to a health care institution when notified by a personnel member of the health care institution.
12. "Organized service" has the same meaning as in A.A.C. R9-10-201.
13. "Owner" means one of the following:
    a. For a health care institution licensed under 9 A.A.C. 10, the licensee;
    b. For a health care institution operated under federal or tribal laws, the administrative unit of the U.S. government or sovereign tribal nation operating the health care institution.
14. "Personnel member" means an individual providing medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401, to a patient.
15. "Physician" means an individual licensed:
    a. According to A.R.S. Title 32, Chapter 13 or 17; or
    b. When working in a health care institution operating under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation, by a similar licensing board in another state.
16. "Signature" means:
    a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
    b. An "electronic signature" as defined in A.R.S. § 44-7002.
17. "Substantial compliance" has the same meaning as in A.R.S. § 36-401.
18. "Transport" means the conveyance of a patient by ground ambulance or air ambulance from one location to another location.
19. "Trauma care" means medical services and nursing services provided to a patient suffering from a sudden physical injury.
20. "Trauma center" has the same meaning as in A.R.S. § 36-2225.
21. "Trauma critical care course" means a multidisciplinary class or series of classes consisting of interactive tutorials, skills teaching, and simulated patient management scenarios of trauma care, consistent with training recognized by the American College of Surgeons.
22. "Trauma facility" means a health care institution that provides trauma care to a patient as an organized trauma service.

23. "Trauma service" means designated personnel members, equipment, and area within a health care institution and the associated policies and procedures for the personnel members to follow when providing trauma care to a patient.
24. "Trauma team" means a group of personnel members with defined roles and responsibilities in providing trauma care to a patient.
25. "Trauma team activation" means a notification to respond that is sent to trauma team personnel members in reaction to triage information received concerning a patient with injury or suspected injury.
26. "Verification" means formal confirmation by a national verification organization that a health care institution meets the national verification organization's standards for providing trauma care at a specific Level of trauma service.

R9-25-1302. Eligibility for Designation (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. A health care institution is eligible for designation as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, Level II Pediatric trauma center, or Level III trauma center if the health care institution:

1. Is either:
   a. Licensed by the Department under 9 A.A.C. 10 to operate as a hospital; or
   b. Operating as a hospital under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation; and
2. For designation as a:
   a. Level I trauma center:
      i. Holds verification, issued within the six months before the date of designation, as a Level I trauma facility;
      ii. Has documentation issued by a national verification organization, within the six months before the date of designation, stating that the health care institution meets the standards specified in R9-25-1308 and Table 13.1 for a Level I trauma center; or
      iii. Meets the requirements in subsection (C);
   b. Level I Pediatric trauma center:
      i. Holds verification, issued within the six months before the date of designation, as a Level I Pediatric trauma facility;
      ii. Has documentation issued by a national verification organization, within

the six months before the date of designation, stating that the health care institution meets the standards specified in R9-25-1308 and Table 13.1 for a Level I Pediatric trauma center; or

iii. Meets the requirements in subsection (C);

c. Level II trauma center:

i. Holds verification, issued within the six months before the date of designation, as a Level II trauma facility; or

ii. Has documentation issued by a national verification organization, within the six months before the date of designation, stating that the health care institution meets the standards specified in R9-25-1308 and Table 13.1 for a Level II trauma center; or

iii. Meets the requirements in subsection (C);

d. Level II Pediatric trauma center:

i. Holds verification, issued within the six months before the date of designation, as a Level II Pediatric trauma facility;

ii. Has documentation issued by a national verification organization, within the six months before the date of designation, stating that the health care institution meets the standards specified in R9-25-1308 and Table 13.1 for a Level II Pediatric trauma center; or

iii. Meets the requirements in subsection (C); or

e. Level III trauma center:

i. Holds verification, issued within the six months before the date of designation, as a Level III trauma facility; or

ii. Has documentation issued by a national verification organization or the Department, within the six months before the date of designation, stating that the health care institution meets the standards specified in R9-25-1308 and Table 13.1 for a Level III trauma center.

B. A health care institution is eligible for designation as a Level IV trauma center if the health care institution:

1. Is either:

a. Licensed by the Department under 9 A.A.C. 10 to operate as:

i. A hospital; or

ii. An outpatient treatment center authorized to provide emergency room services, as defined in A.A.C. R9-10-1001, according to A.A.C.

R9-10-1019; or

b. Operating as a hospital or an outpatient treatment center providing emergency services under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation; and

2. Either:

a. Holds verification, issued within the six months before the date of designation, as a Level IV trauma facility; or

b. Has documentation issued by a national verification organization or the Department, within the six months before the date of designation, stating that the health care institution meets the standards specified in R9-25-1308 and Table 13.1 for a Level IV trauma center.

C. A health care institution is eligible for designation as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center based on assessment by the Department that the health care institution meets the standards specified in R9-25-1308 and Table 13.1 for the Level of trauma center for which designation is requested if the health care institution:

1. Applies for verification from a national verification organization;
2. Informs the Department, at least 30 calendar days before, of the dates the national verification organization will be on the premises of the health care institution to assess the health care institution for compliance with the national verification organization's standards for verification;
3. Invites the Department to review the facility and documentation of capabilities of the health care institution during the national verification organization's assessment in subsection (C)(2);
4. Is not issued verification from the national verification organization at the Level of designation sought;
5. Does not receive the documentation required in subsection (A)(2)(a)(ii), (b)(ii), (c)(ii), or (d)(ii), as applicable; and
6. Receives the documentation specified in R9-25-1306(G) and, if applicable, submits to the Department a written plan in R9-25-1306(H), acceptable to the Department, to correct instances of non-compliance.

D. A health care institution is eligible to retain designation as a specific Level of trauma center if the health care institution complies with the applicable requirements in this Article for the specific Level of trauma center.

R9-25-1303. Application and Designation Process (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. An owner applying for initial designation or to renew designation for a health care institution shall submit to the Department an application including:

1. The following information, in a Department-provided format:
   a. The name, address, and telephone number of the health care institution for which the owner is requesting designation;
   b. The owner's name, address, e-mail address, telephone number, and, if available, fax number;
   c. The name, e-mail address, telephone number, and, if available, fax number of the chief administrative officer, as defined in A.A.C. R9-10-101, for the health care institution for which the owner is requesting designation;
   d. The designation Level for which the owner is applying;
   e. Whether the owner is requesting designation for the health care institution based on:
      i. Verification, or
      ii. Meeting the applicable standards specified in R9-25-1308 and Table 13.1;
   f. If the owner is requesting designation for the health care institution based on verification:
      i. The name of the national verification organization;
      ii. The name, telephone number, and e-mail address for a representative of the national verification organization;
      iii. The Level of verification held;
      iv. The effective date of the verification, and
      v. The expiration date of the verification;
   g. If the owner is requesting designation for the health care institution based on the health care institution meeting the applicable standards specified in R9-25-1308 and Table 13.1:
      i. Whether:
         (1) A national verification organization has assessed the health care institution, or
         (2) The Department will be assessing the health care institution;

ii. If a national verification organization has assessed the health care institution:

(1) The name of the national verification organization;

(2) The name, telephone number, and e-mail address for a representative of the national verification organization; and

(3) The date the national verification organization assessed the health care institution; and

iii. If the Department will be assessing the health care institution, the date the health care institution will be ready for the Department to assess the health care institution;

h. Unless the owner is an administrative unit of the U.S. government or a sovereign tribal nation, the license number, issued by the Department, for the health care institution for which designation is being requested;

i. The name, e-mail address, telephone number, and, if available, fax number of the health care institution's trauma program manager;

j. Whether the health care institution's trauma registry will be located at the health care institution or be part of a centralized trauma registry;

k. The name, e-mail address, telephone number, and, if available, fax number of the health care institution's trauma registrar;

l. If applying for designation as a Level IV trauma center, whether the health care institution plans to submit, in addition to the information required in R9-25-1309(A), the information specified in R9-25-1309(B);

m. If not already submitting trauma registry information to the Department, the time period for which the health care institution plans to begin submitting trauma registry information;

n. Except for a health care institution applying for designation as a Level IV trauma center, the name, e-mail address, telephone number, and, if available, fax number of the health care institution's trauma medical director;

o. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;

p. Attestation that:

i. The owner will comply with all applicable requirements in A.R.S. Title 36, Chapter 21.1 and this Article; and

ii. The information and documents provided as part of the application are accurate and complete; and

q. The dated signature of the applicable individual according to R9-25-102;

2. If applicable, documentation demonstrating that the health care institution is operating as a hospital or an outpatient treatment center providing emergency services under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation; and

3. One of the following:

a. Documentation from the national verification organization, identified according to subsection (A)(1)(f)(i), establishing that the owner holds verification for the health care institution at the Level of designation being requested and showing the effective date and expiration date of the verification;

b. Documentation from the national verification organization, identified according to subsection (A)(1)(g)(ii)(1), demonstrating that the health care institution meets the applicable standards specified in R9-25-1308 and Table 13.1; or

c. The information and documents required in R9-25-1307(C), (D), or (F), as applicable.

B. An owner applying to renew designation for a health care institution shall submit the application in subsection (A) to the Department at least 60 calendar days and no more than 90 calendar days before the expiration of the current designation.

C. Within 30 calendar days after receiving an application submitted according to subsection (A), the Department shall review the application submitted for completeness, and, if the application is:

1. Incomplete, provide to the owner a written notice listing each missing item and the information or items needed to complete the application; and

2. Complete and based on:

a. Verification, comply with R9-25-1307(A);

b. A national verification organization assessing the health care institution's meeting the applicable standards specified in R9-25-1308 and Table 13.1, comply with R9-25-1307(B); or

c. The Department assessing the health care institution's meeting the applicable standards specified in R9-25-1308 and Table 13.1, assess compliance with applicable requirements in A.R.S. Title 36, Chapter 21.1 and this Article according to R9-25-1307(E) or (G).

D. The Department shall consider an application withdrawn if an owner:

1. Fails to submit to the Department all of the information or items listed in a notice of missing items within 60 calendar days after the date on the notice of missing items, unless the Department and the owner agree to an extension of this time; or
2. Submits a written request withdrawing the application.

E. If an owner submits an application for renewal of designation for a health care institution according to subsection (A) before the expiration date of the current designation, the designation of the health care institution remains in effect until the:

1. Department has determined whether or not to issue a renewal of the designation, or
2. Application is withdrawn.

R9-25-1303.01. Health Care Institutions with Provisional Designation (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. A health care institution that held provisional designation before the effective date of the rules in this Article may retain the provisional designation until the expiration date of the provisional designation.

B. At least 60 calendar days and no more than 90 calendar days before the expiration of a provisional designation, an owner of a health care institution with a provisional designation shall submit to the Department an application for initial designation according to R9-25-1303(A).

C. If an owner of a health care institution with a provisional designation does not submit an application for initial designation according to subsection (B), the health care institution is no longer designated as a trauma center, as of the expiration date of the provisional designation.

R9-25-1304. Changes Affecting Designation Status (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. An owner of a trauma center shall:

1. Notify the Department, in writing or in a Department-provided format, no later than 60 calendar days after the date of a change in the health care institution's:
   a. Name,
   b. Trauma program manager, or
   c. If applicable, trauma medical director; and
2. Provide the effective date of the change and, as applicable, the:
   a. Current and new name of the health care institution, or
   b. Name of the new trauma program manager or trauma medical director.

B. An owner of a trauma center shall notify the Department in writing within three business days

after:

1. The trauma center's health care institution license expires or is suspended or revoked;
2. The trauma center's health care institution license is changed to a provisional license under A.R.S. § 36-425;
3. The trauma center no longer holds verification; or
4. A change, which is expected to last for more than seven consecutive calendar days, in the trauma center's ability to meet:
   a. The applicable standards specified in R9-25-1308 and Table 13.1, or
   b. If designation is based on verification, the national verification organization's standards for verification.

C. At least 90 calendar days before a trauma center ceases to provide a trauma service, the owner of the trauma center shall notify the Department, in writing or in a Department-provided format, of the owner's intention to cease providing the trauma service and to relinquish designation, including the effective date.

D. The Department shall, upon receiving a notice described in:

1. Subsection (A), issue an amended designation that incorporates the name change but retains the expiration date of the current designation;
2. Subsection (B)(1), send the owner a written notice stating that the health care institution no longer meets the definition of a trauma center and that the Department intends to dedesignate the health care institution, according to R9-25-1307(J)(2);
3. Subsection (B)(2), evaluate the restrictions on the provisional license to determine if the trauma service was affected and may send the owner a written notice of the Department's intention to:
   a. Dedesignate the health care institution, according to R9-25-1307(J) through (M);
   b. Require a modification of the health care institution's designation within 15 calendar days after the date of the notice, according to R9-25-1305; or
   c. Require a corrective action plan to address issues of compliance with the applicable standards specified in R9-25-1308 and Table 13.1, according to R9-25-1306(E);
4. Subsection (B)(3), send the owner written notice that the owner is required, within 15 calendar days after the date of the notice, to submit to the Department:
   a. An application for designation at a specific Level of trauma center, according to R9-25-1303, based on meeting the applicable standards specified in R9-25-1308 and Table 13.1; or

b. Written notification of the owner's intention to relinquish designation;

5. Subsection (B)(4), send the owner written notice that the owner is required, within 15 calendar days after the date of the notice, to submit to the Department:
   a. An application for modification of the health care institution's designation, according to R9-25-1305;
   b. A corrective action plan to address issues of compliance with the applicable standards specified in R9-25-1308 and Table 13.1, according to R9-25-1306(E); or
   c. Written notification of the owner's intention to relinquish designation; or
6. Subsection (C), (D)(4)(b), or (D)(5)(c), send the owner written confirmation of the voluntary relinquishment of designation.

E. An owner of a trauma center, who obtains verification for the trauma center during a term of designation that was based on the trauma center meeting the applicable standards specified in R9-25-1308 and Table 13.1, may obtain a new initial designation based on verification, with a designation term based on the dates of the verification, by submitting an application according to R9-25-1303.

R9-25-1305. Modification of Designation (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. Except as provided in R9-25-1304(D)(3)(b) and (5)(a), at least 30 calendar days before ceasing to provide a trauma service consistent with a trauma center's current designation, an owner of a trauma center may request a designation that requires fewer resources and capabilities than the trauma center's current designation by submitting to the Department an application for modification of the trauma center's designation, in a Department-provided format, that includes:

1. The name and address of the trauma center for which the owner is requesting modification of designation;
2. A list of the criteria for the current designation with which the owner no longer intends to comply;
3. An explanation of the changes being made in the trauma center's resources or operations, related to each criterion specified according to subsection (A)(2), to ensure the health and safety of a patient;
4. The Level of designation being requested;
5. An attestation that:
   a. The owner will be in compliance with all applicable requirements in A.R.S. Title

36, Chapter 21.1 and this Article for the Level of designation requested if modified designation is issued; and

b. The information provided in the application is accurate and complete; and

6. The dated signature of the applicable individual according to R9-25-102.

B. The Department shall review the application submitted according to R9-25-1307(I) to determine whether, with the changes being made in the trauma center's resources and operations, the trauma center will be in substantial compliance based the applicable standards specified in R9-25-1308 and Table 13.1 for the Level of designation requested.

C. To retain trauma center designation for a health care institution, an owner who holds modified designation shall, before the expiration date of the modified designation:

1. Apply for renewal of designation according to R9-25-1303, based on the health care institution's meeting the applicable standards specified in R9-25-1308 and Table 13.1, for the Level of the modified designation; or
2. Apply for initial designation according to R9-25-1303, based on the health care institution meeting the applicable standards specified in R9-25-1308 and Table 13.1, for a Level other than the Level of the modified designation.

R9-25-1306. Inspections (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. When the Department inspects a health care institution applying for a trauma center designation or a health care institution designated as a trauma center to determine compliance with the applicable requirements in this Article, the Department:

1. Shall use criteria for assessing compliance developed using recommendations from the State Trauma Advisory Board, according to A.R.S. § 36-2222(E)(1); and
2. May:
   a. Evaluate the health care institution's equipment and physical plant;
   b. Interview the health care institution's personnel members, including any individuals providing trauma care; and
   c. Review any of the following:
      i. Medical records;
      ii. Patient discharge summaries;
      iii. Patient care logs;
      iv. Rosters and schedules of personnel members and individuals who provide trauma care as part of the trauma service;
      v. Performance-improvement-related documents, including quality

management program documents required in A.A.C. R9-10-204 or R9-10-1004 as applicable; and

vi. Other documents relevant to the provision of trauma care as part of the trauma service.

B. The Department shall determine whether there is a need for an inspection of a health care institution and which components in subsection (A)(2) to include in an inspection, based on the health care institution's application; previous inspections, if applicable; and the operating history of the health care institution and may conduct an announced inspection of the identified components:

1. Before issuing an initial, renewal, or modified designation to an owner applying for designation of a health care institution as a trauma center;
2. If an owner of a health care institution designated as a trauma center has submitted a corrective action plan under subsection (E); or
3. A health care institution designated as a trauma center is randomly selected to receive an inspection.

C. If the Department has reason to believe that a trauma center is not complying with applicable requirements in A.R.S. Title 36, Chapter 21.1 and this Article, the Department may conduct an announced or unannounced inspection of the trauma center according to subsection (A).

D. Within 30 calendar days after completing an inspection, the Department shall send to an owner a written report of the Department's findings, including, if applicable, a list of any instances of non-compliance identified during the inspection and a request for a written corrective action plan.

E. Within 15 calendar days after receiving a request for a written corrective action plan, an owner shall submit to the Department a written corrective action plan that includes for each identified instance of non-compliance:

1. A description of how the instance of non-compliance will be corrected and reoccurrence prevented, and
2. A date of correction for the instance of non-compliance.

F. The Department shall accept a written corrective action plan if the corrective action plan:

1. Describes how each identified instance of non-compliance will be corrected and reoccurrence prevented, and
2. Includes a date for correcting each instance of non-compliance that is appropriate to the actions necessary to correct the instance of non-compliance.

G. If the Department reviews a health care institution's facility and documentation of capabilities during a national verification organization's assessment according to R9-25-1302(C)(3) and the

health care institution is not issued verification from the national verification organization at the Level of designation sought, the Department shall send to an owner of the health care institution, within 30 calendar days after the review, a written report of the Department's findings, including, if applicable, a list of any instances of non-compliance with requirements in R9-25-1308 and Table 13.1 identified during the review.

H. A health care institution receiving a written report in subsection (G) containing a list of instances of non-compliance with requirements in R9-25-1308 and Table 13.1 identified during a review of the health care institution's facility and documentation of capabilities may submit to the Department a written plan to correct instances of non-compliance that includes:

1. A description of how the health care institution will correct each instance of non-compliance and prevent the reoccurrence, and
2. A date by which the health care institution plans to correct each instance of non-compliance.

R9-25-1307. Designation and Dedesignation (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

A. For designation of a health care institution based on verification, the Department shall, within 45 calendar days after receiving a complete application from an owner:

1. If the application complies with the applicable requirements in this Article, issue a designation for the health care institution that is valid for the duration of the verification; or
2. If the application does not comply with the applicable requirements in this Article, provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10 that the Department intends to decline to issue a designation for the health care institution.

B. Except as provided in subsection (F), for designation of a health care institution based on an assessment by a national verification organization, the Department shall, within 60 calendar days after receiving a complete application from an owner, review the application and, if the Department determines that:

1. The application and the health care institution comply with the applicable requirements in this Article, issue a designation for the health care institution that is valid for three years from the issue date;
2. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article, and the Department has accepted a written corrective action plan submitted according to

R9-25-1306(E), issue a designation for the health care institution that is valid for one year from the issue date; or

3. The application or the health care institution does not comply with the applicable requirements in this Article, provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10 that the Department intends to decline to issue a designation for the health care institution.

C. Except as provided in subsection (F) for renewal of a one-year designation, for designation of a health care institution as a Level III trauma center or a Level IV trauma center based on an assessment by the Department, an owner shall include as part of the application required in R9-25-1303(A):

1. The following information in a Department-provided format:
   a. The name of the health care institution for which the owner is requesting designation;
   b. The services the health care institution is providing or plans to provide as part of the trauma service;
   c. The name and title of the liaison to the trauma service from each of the services listed according to subsection (C)(1)(b);
   d. If applicable, the name, e-mail address, telephone number, and, if available, fax number of the health care institution's emergency department physician director;
   e. If applicable, the name, e-mail address, telephone number, and, if available, fax number of the health care institution's surgical director or co-director;
   f. If a multidisciplinary peer review committee is required according to Table 13.1 for the Level of the trauma center, the name and title of each member of the multidisciplinary peer review committee;
   g. If the health care institution's trauma registry will be part of a centralized trauma registry, a description of the training provided to the trauma program manager to enable the trauma program manager to comply with R9-25-1308(D)(2);
   h. If applicable, for an application for initial designation, a description of the health care institution's plans for the continuing education activities related to trauma care, required in R9-25-1308(G)(4);
   i. For renewal of designation, a description of the continuing education activities conducted during the term of the designation;
   j. If applicable, the name, e-mail address, telephone number, and, if available, fax number of the health care institution's injury prevention coordinator;

k. A description of the methods by which trauma team personnel members communicate with EMS personnel;

l. A description of the trauma-related training received by registered nurses in the intensive care unit;

m. An attestation that the owner of the health care institution will prohibit:

i. The trauma medical director from serving as trauma medical director for another health care institution; and

ii. A physician on-call for general surgery, neurosurgery, or orthopedic surgery to be on-call or on a back-up call list at another health care institution; and

n. The dated signature of the applicable individual according to R9-25-102;

2. A copy of the policies and procedures required in R9-25-1308(B)(6) for the health care institution's trauma registry;

3. A copy of the policies and procedures required in R9-25-1308(B)(7) for the health care institution's performance improvement program;

4. A copy of the policies and procedures required in R9-25-1308(F)(2) for the health care institution's trauma service;

5. If applicable, a copy of the policies and procedures required in R9-25-1308(F)(9) for operating rooms;

6. A copy of the applicable policies and procedures required in R9-25-1308(H)(4);

7. A copy of the health care institution's clinical practice guidelines, describing the health care institution's capability to resuscitate, stabilize, and transfer pediatric patients;

8. If applicable, a copy of the bylaws of the health care institution's multidisciplinary peer review committee;

9. Copies of the job descriptions for the health care institution's:

a. Trauma program manager;

b. Trauma registrar; and

c. If applicable, injury prevention coordinator;

10. A list of the trauma care parameters the health care institution is or will be monitoring as part of the performance improvement program;

11. A list of trauma team members, including:

a. Name,

b. Title, and

c. Role on the trauma team;

12. If required for an individual listed according to subsection (C)(11), a copy of documentation of the individual's:
    a. Board certification or board eligibility,
    b. Most recent certification in a trauma critical care course,
    c. Pediatric-specific credentials, and
    d. Other trauma-related training; and
13. If the trauma medical director is not a member of the trauma team, the applicable documentation required in subsection (C)(12) for the trauma medical director.

D. Except as provided in subsection (F) for renewal of a one-year designation, for designation of a health care institution as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center based on an assessment by the Department under R9-25-1302(C), an owner shall include as part of the application required in R9-25-1303(A):

1. A copy of the documentation submitted to the national verification organization as part of an application for verification;
2. If not included in the documentation in subsection (D)(1):
    a. Any information or documents required in subsection (C);
    b. For an application for initial designation, a description of the health care institution's plans for:
        i. Injury prevention activities, required in R9-25-1308(G)(5)(a); and
        ii. Educational outreach activities, required in R9-25-1308(G)(5)(b); and
    c. For an application for renewal of designation, a description of the injury prevention activities and educational outreach activities conducted during the term of the designation;
3. A copy of the national verification's organization's written report to the health care institution describing the results of the national verification organization's assessment of the health care organization;
4. A copy of the written report in R9-25-1306(G); and
5. If applicable, the written plan to correct instances of non-compliance in R9-25-1306(H).

E. Except as provided in subsection (G) for renewal of a one-year designation, for designation of a health care institution based on an assessment by the Department, the Department shall, within 90 calendar days after receiving a complete application from an owner, review the application, inspect the health care institution, if applicable, and, if the Department determines that:

1. The application and the health care institution comply with the applicable requirements in this Article, issue a designation for the health care institution that is valid for three years

from the issue date;

2. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article, and the Department has accepted the document submitted according to R9-25-1306(E) or subsection (D)(5), issue a designation for the health care institution that is valid for one year from the issue date; or
3. The application or the health care institution does not comply with the applicable requirements in this Article, provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10 that the Department intends to decline to issue a designation for the health care institution.

F. For renewal, at the same Level of trauma center, of a one-year designation issued according to subsection (B)(2) or (E)(2), an owner shall include, as part of the application required in R9-25-1303(A), documentation related to the completion of the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2).

G. Except as specified in subsection (H), the Department shall, within 60 calendar days after receiving from an owner an application submitted according to subsection (F), review the information and documentation, inspect the health care institution if applicable, and:

1. Issue a designation for the health care institution that is valid for two years from the issue date if the Department determines that:
   a. The application and the health care institution comply with the applicable requirements in this Article; and
   b. The owner has completed the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2), as applicable; or
2. Provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10 that the Department intends to decline to issue a designation for the health care institution if the Department determines that:
   a. The application or the health care institution do not comply with the applicable requirements in this Article; or
   b. The owner has not completed all of the components of the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2), as applicable.

H. The Department shall review according to R9-25-1303(C) and subsection (A), (B), or (E), as applicable, an application for renewal of designation submitted by the owner of a trauma center that:

1. Had been issued a one-year designation according to subsection (B)(2) or (E)(2); and
2. Has not completed all of the components of the plan specified in the document accepted by the Department in subsection (B)(2) or (E)(2), as applicable.

I. For modification of a designation according to R9-25-1305, the Department shall, within 30 calendar days after receiving a complete application for modification in R9-25-1305(A) from an owner, review the application, inspect the health care institution, if applicable, and:

1. Issue a modified designation for the Level of designation requested for the health care institution that is valid for the duration of the original designation or one year from the issue date, whichever is longer, if the Department determines that:
   a. The application and the health care institution comply with the applicable requirements in this Article for the Level of designation requested; or
   b. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article for the Level of designation requested, and the Department has accepted a written corrective action plan submitted according to R9-25-1306(E);
2. Issue a modified designation for a lower Level of designation than the Level of designation requested for the health care institution that is valid for the duration of the original designation or one year from the issue date, whichever is longer, if the Department determines that:
   a. The application and the health care institution comply with the applicable requirements in this Article for the lower Level of designation and the health care institution:
      i. Does not comply with the applicable requirements in this Article for the Level of designation requested; or
      ii. Is in substantial compliance with the applicable requirements in this Article for the Level of designation requested, and the Department has not accepted a written corrective action plan submitted according to R9-25-1306(E); or
   b. The application complies with the applicable requirements in this Article, the health care institution is in substantial compliance with the applicable requirements in this Article for the lower Level of designation, and the Department has accepted a written corrective action plan according to R9-25-1306(E); or

3. Provide a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10 that the Department intends to decline to issue a modified designation for the health care institution if the Department determines that the application or the health care institution does not comply with the applicable requirements in this Article.

J. The Department may dedesignate a health care institution as a trauma center if an owner:

1. Has provided false or misleading information to the Department;
2. Is not eligible for designation under R9-25-1302(A) or (B); or
3. Fails to comply with an applicable requirement in A.R.S. Title 36, Chapter 21.1 or this Article.

K. In determining whether to dedesignate a health care institution as a trauma center, the Department shall consider:

1. The severity of each instance relative to public health and safety;
2. The number of instances;
3. The nature and circumstances of each instance;
4. Whether each instance was corrected, the manner of correction, and the duration of the instance; and
5. Whether the instances indicate a lack of commitment to having the trauma center meet the verification standards of a national verification organization or, if applicable, the standards specified in R9-25-1308 and Table 13.1.

L. If the Department intends to dedesignate a health care institution, the Department shall send to the owner a written notice that complies with A.R.S. Title 41, Chapter 6, Article 10.

M. An owner who receives a written notice in subsection (A)(2), (B)(3), (E)(3), (G)(2), (I)(3), or (J) may file a written notice of appeal with the Department that complies with A.R.S. Title 41, Chapter 6, Article 10.

R9-25-1308. Trauma Center Responsibilities (A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(4), (5), and (6))

A. The owner of a trauma center shall ensure that:

1. If designation is based on:
   a. Verification, the trauma center meets the applicable standards of the verifying national verification organization; or
   b. Meeting the applicable standards specified in this Section and Table 13.1, the trauma center meets the applicable standards for the Level of trauma center for which designation has been issued;

2. The trauma center complies with a written corrective action plan accepted by the Department according to R9-25-1306(F); and
3. The Department has access to:
   a. The trauma center and to personnel members present in the trauma center; and
   b. Documents that are requested by the Department and not confidential under A.R.S. Title 36, Chapter 4, Article 4 or 5, within two hours after the Department's request.

B. The owner of a trauma center shall ensure that the trauma center:

1. Except as provided in subsection (D), establishes a trauma registry of patients receiving trauma care who meet the criteria specified in subsection (C)(1) that contains the information required in R9-25-1309, as applicable for the specific Level of the trauma center;
2. Appoint an individual to act as trauma registrar to coordinate trauma registry activities;
3. If necessary to comply with subsections (C)(2) and (3), provides sufficient additional individuals to assist with trauma registry activities;
4. Establishes a performance improvement program for the trauma service to develop and implement processes to improve trauma care parameters;
5. If required according to Table 13.1 for the Level of the trauma center, establishes as part of the performance improvement program, established according to subsection (B)(4), a multidisciplinary peer review committee to review the quality of trauma care provided by the trauma center, including information from the trauma registry, and suggest methods to improve the quality of trauma care;
6. Establishes, documents, and implements policies and procedures for the trauma registry established according to subsection (B)(1) that include:
   a. Ensuring that individuals responsible for collecting, entering, or reviewing information in the trauma registry have received training in gaining access to, and retrieving information from, the trauma registry;
   b. Collection of the information required in R9-25-1309 about the patients specified in subsection (C)(1) receiving trauma care;
   c. Submission to the Department of the information required in subsection (C)(2);
   d. Review of information in the trauma center's trauma registry; and
   e. Performance improvement activities required in R9-25-1310; and
7. Establishes, documents, and implements policies and procedures for the performance improvement program established according to subsection (B)(4), including:

a. A list of the positions of personnel members who have defined roles in the performance improvement program and, if applicable, a list of positions that are dedicated to performance improvement activities for patients receiving trauma care from the trauma center;

b. The qualifications, skills, and knowledge required of the personnel members in the positions specified according to subsection (B)(6)(a);

c. The role each personnel member specified according to subsection (B)(6)(a) plays in the performance improvement program;

d. The trauma care parameters to be reviewed as part of the performance improvement program;

e. The frequency of review of trauma care parameters;

f. If an issue related to trauma care or to trauma care parameters is identified:

i. How a plan to address the issue is developed to reduce the chance of the issue recurring in the future;

ii. How the plan is documented;

iii. The mechanism and criteria by which the plan is reviewed and approved;

iv. How the plan is implemented; and

v. How implementation of the plan and future recurrences are monitored;

g. If applicable, the composition, duties, responsibilities, and frequency of meetings of the multidisciplinary peer review committee established according to subsection (B)(5);

h. If applicable, how the multidisciplinary peer review committee collaborates with the trauma center's quality management program; and

i. How changes proposed by the performance improvement program are reviewed by the trauma center's quality management program.

C. The owner of a trauma center shall ensure that:

1. The trauma registry, established according to subsection (B)(1), includes the information required in R9-25-1309 for each patient with whom the trauma center had contact who meets one or more of the following criteria:

a. A patient with injury or suspected injury who is:

i. Transported from a scene to a trauma center or an emergency department based on the responding emergency medical services provider's or ambulance service's triage protocol required in R9-25-201(E)(2)(b), or

ii. Transferred from one health care institution to another health care

institution by an emergency medical services provider or ambulance service;

b. A patient with injury or suspected injury for whom a trauma team activation occurs; or

c. A patient with injury, who is admitted as a result of the injury or who dies as a result of the injury, and whose medical record includes one or more of specific ICD-codes indicating that:

i. At the initial encounter with the patient, the patient had:

(1) An injury or injuries to specific body parts,

(2) Unspecified multiple injuries,

(3) Injury of an unspecified body region,

(4) A burn or burns to specific body parts,

(5) Burns assessed through Total Body Surface Area percentages, or

(6) Traumatic Compartment Syndrome; and

ii. The patient's injuries or burns were not only:

(1) An isolated distal extremity fracture from a same-level fall,

(2) An isolated femoral neck fracture from a same-level fall,

(3) Effects resulting from an injury or burn that developed after the initial encounter,

(4) A superficial injury or contusion, or

(5) A foreign body entering through an orifice;

2. The following information is submitted to the Department, in a Department-provided format, according to subsection (C)(3):

a. The name and physical address of the trauma center;

b. The date the trauma registry information is being submitted to the Department;

c. The total number of patients whose trauma registry information is being submitted;

d. The quarter and year for which the trauma registry information is being submitted;

e. The range of emergency department or hospital arrival dates for the patients for whom trauma registry information is being submitted;

f. The name, title, e-mail address, telephone number, and, if available, fax number of the trauma center's point of contact for the trauma registry information;

g. Any special instructions or comments to the Department from the trauma center's

point of contact;

h. The information from the trauma registry for patients identified during the quarter specified according to subsection (C)(2)(d); and

i. Updated information for any patients identified during the previous quarter, including the patient's name, medical record number, and admission date; and

3. The information required in subsection (C)(2) is submitted:

a. For patients identified between January 1 and March 31, so that the information in subsections (C)(2)(a) through (h) is received by the Department by July 1 of the same calendar year;

b. For patients identified between April 1 and June 30, so that the information in subsections (C)(2)(a) through (h) is received by the Department by October 1 of the same calendar year;

c. For patients identified between July 1 and September 30, so that the information in subsections (C)(2)(a) through (h) is received by the Department by January 2 of the following calendar year; and

d. For patients identified between October 1 and December 31, so that the information in subsections (C)(2)(a) through (h) is received by the Department by April 1 of the following calendar year.

D. Trauma centers under the same governing authority, as defined in A.R.S. § 36-401, may establish a single, centralized trauma registry and submit to the Department consolidated information from the trauma registry, according to subsections (C)(2) and (3), if:

1. The information submitted to the Department specifies for each patient in the trauma registry the trauma center that had contact with the patient, and

2. Each trauma center contributing information to the centralized trauma registry is able to:

a. Access, edit, and update the information contributed by the trauma center to the centralized trauma registry; and

b. Use the information contributed by the trauma center to the centralized trauma registry when complying with performance improvement program requirements in this Section.

E. As part of the performance improvement program, the owner of a trauma center shall ensure that the trauma program manager and, if applicable, trauma medical director periodically, according to policies and procedures:

1. Review the information in the trauma center's trauma registry; and

2. Monitor at least the following trauma care parameters, as applicable, for patients in the

trauma registry:

a. EMS received by a patient;

b. Length of stay longer than two hours in the emergency department before transfer;

c. Instances of trauma team activation to determine if trauma team activation was timely and appropriate;

d. Instances where trauma care was provided to a patient but trauma team activation did not occur;

e. Time from notification of a surgeon on the trauma team that a patient described in subsection (H)(6)(b)(i) is in the emergency department to when the surgeon arrives in the emergency department;

f. Documentation of the nursing services provided to a patient;

g. Instances and reasons for transfer of a patient;

h. Instances and reasons for transfer to a hospital not designated as a trauma center;

i. For a hospital designated as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, instances and reasons for diversion, as defined in A.A.C. R9-10-201, of a patient requiring trauma care;

j. Instances of and circumstances related to the death of a patient;

k. Other patient outcomes;

l. Trauma care parameters for pediatric patients, including pediatric-specific measures; and

m. The completeness and timeliness of trauma data submission.

F. In addition to the requirements in subsections (A) through (E), the owner of a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 shall:

1. Ensure that a trauma service is established if required by Table 13.1;

2. Ensure that policies and procedures for the trauma service are established, documented, and implemented that include:

a. The composition of the trauma team;

b. The qualifications, skills, and knowledge required of each personnel member of the trauma team;

c. Continuing education or continuing medical education requirements for each personnel member of the trauma team;

d. The roles and responsibilities of each personnel member of the trauma team;

e. Under what circumstances the trauma team is activated; and

f. How the trauma team is activated;

3. Ensure that the personnel members on the trauma team have the qualifications, skills, and knowledge required in the policies and procedures;

4. If the trauma center is required according to Table 13.1 to have a trauma medical director, appoint a board-certified or board-eligible surgeon as trauma medical director;

5. Prohibit a physician from serving as trauma medical director for the trauma center if the physician is serving as trauma medical director for another health care institution;

6. Ensure that the trauma medical director completes:

a. If the trauma center's designation is for a three-year period, at least 48 hours of external trauma-related continuing medical education during the term of the designation;

b. If the trauma center's designation is for a one-year period, at least 16 hours of external trauma-related continuing medical education during the term of the designation; and

c. If the trauma center is designated as a Level I Pediatric trauma center or Level II Pediatric trauma center, at least 12 of the 48 hours required in subsection (F)(6)(a) or four of the 16 hours required in subsection (F)(6)(b) in pediatric trauma-related continuing medical education;

7. Appoint an individual to act as trauma program manager to coordinate trauma service activities;

8. If the trauma center is required by Table 13.1 to have a multidisciplinary peer review committee, ensure that each surgeon on the trauma team designated according to subsection (F)(3) attends at least 50% of the meetings of the multidisciplinary peer review committee;

9. If the trauma center provides surgical services, ensure that policies and procedures for operating rooms and an operating room team are established, documented, and implemented that include:

a. The availability of an operating room for trauma care;

b. The composition of an operating room team;

c. The qualifications, skills, and knowledge required of each personnel member of an operating room team;

d. The roles and responsibilities of each personnel member of an operating room

team;

e. If an operating room team is not on the premises of the health care institution 24 hours a day, under what circumstances the operating room team is notified to come to the trauma center; and

f. How the operating room team is notified;

10. Ensure that the following personnel members on the trauma team:

a. Hold current certification in a trauma critical care course:

i. Trauma medical director, if applicable;

ii. Each emergency medicine physician who is not board-certified or board-eligible; and

iii. Each physician assistant or registered nurse practitioner who is responsible for patients in an emergency department in the absence of an emergency physician; or

b. Have held certification in a trauma critical care course:

i. Each general surgeon other than the trauma medical director, and

ii. Each emergency medicine physician who is board-certified or board-eligible;

11. If the trauma center is designated as a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, ensure that each of the trauma team personnel members required in Table 13.1(C)(2) and (C)(3)(a) through (f) are board-certified or board-eligible;

12. If the trauma center is designated as a Level I Pediatric trauma center, ensure that the following trauma team members are fellowship-trained:

a. The surgeon credentialed for pediatric trauma care required in Table 13.1(C)(2)(a)(iii),

b. The pediatric emergency medicine physician required in Table 13.1(C)(2)(c),

c. The pediatric-credentialed orthopedic surgeon required in Table 13.1(C)(3)(b),

d. The pediatric-credentialed neurosurgeon required in Table 13.1(C)(3)(d), and

e. The pediatric-credentialed critical care medicine physician required in (C)(3)(f);

13. If the trauma center is designated as a Level II Pediatric trauma center, ensure that:

a. The pediatric-credentialed critical care medicine physician required in (C)(3)(f) is fellowship-trained, and

b. A fellowship-trained pediatric emergency medicine physician provides supervision for pediatric emergency trauma care and is appointed as a liaison to

the multidisciplinary peer review committee established according to subsection (B)(5); and

14. If the trauma center is not designated as a Level I Pediatric trauma center or Level II Pediatric trauma center and annually provides trauma care to 100 or more injured children younger than 15 years of age, ensure that the trauma center:
    a. Complies with subsection (F)(13) and Table 13.1(C)(2)(a)(iii), (3)(b), (3)(d), and (3)(f) and (F)(2); and
    b. Has a:
        i. Pediatric emergency department area,
        ii. Pediatric intensive care area, and
        iii. Pediatric-specific trauma performance improvement program.

G. In addition to the requirements in subsections (A) through (E), the owner of a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 shall ensure that the trauma center:

1. Establishes, documents, and implements a patient transfer plan, consistent with A.A.C. R9-10-211, that include:
    a. The criteria for transferring a patient,
    b. The health care institution to which a patient meeting specific criteria will be transferred,
    c. The personnel members who are responsible for coordinating the transfer of a patient, and
    d. The process for transferring a patient;
2. Participates in state, local, or regional trauma-related activities such as:
    a. The State Trauma Advisory Board, established by A.R.S. § 36-2222;
    b. A regional emergency medical services coordinating council described in A.R.S. § 36-2222(A)(3);
    c. Trauma Registry Users Group, established by the Department;
    d. Trauma Managers Workgroup, established by the Department; or
    e. Injury Prevention Council;
3. Participates in injury prevention programs specific to the trauma center's patient population at the national, regional, state, or local levels;
4. Except for a Level IV trauma center, conducts trauma care continuing education activities for physicians, trauma center personnel members, and EMCTs;
5. If the trauma center holds a designation as a Level I trauma center, Level I Pediatric

trauma center, Level II trauma center, or Level II Pediatric trauma center, establishes and maintains:

a. An injury prevention program:

i. Independently or in collaboration with other health care institutions, health advocacy groups, or the Department; and

ii. That includes:

(1) Designating a prevention coordinator who serves as the trauma center's representative for injury prevention and injury control activities;

(2) Carrying out injury prevention and injury control activities, including activities specific to the patient population;

(3) Conducting injury control studies;

(4) Monitoring the progress and effect of the injury prevention program; and

(5) Providing injury prevention and injury control information resources for the public; and

b. An educational outreach program:

i. Independently or in collaboration with other health care institutions, health advocacy groups, or the Department;

ii. That includes providing education to physicians, trauma center personnel members, EMCTs, and the general public; and

iii. That may include education about:

(1) Injury prevention,

(2) Trauma care,

(3) Other topics specific to the patient population,

(4) Criteria for assessing a patient who may require trauma care,

(5) Criteria for the transfer of a patient requiring trauma care; and

6. If the trauma center holds a designation as a Level I trauma center or Level I Pediatric trauma center:

a. Establishes and maintains, either independently or in collaboration with other hospitals, a residency program or fellowship program that provides advanced medical training in emergency medicine, general surgery, orthopedic surgery, or neurosurgery;

b. Participates in the provision of a trauma critical care course;

c. Conducts or participates in research related to trauma and trauma care; and

d. Maintains an Institutional Review Board, established consistent with 45 CFR Part 46, to review biomedical and behavioral research related to trauma and trauma care involving human subjects, conducted, funded, or sponsored by the trauma center, in order to protect the rights of the human subjects of such research.

H. In addition to the requirements in subsections (A) through (E), the owner of a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 shall:

1. Ensure the presence of a surgeon at all operative procedures;

2. If the trauma center provides emergency medicine, neurosurgery, orthopedic surgery, anesthesiology, critical care, or radiology as an organized service, ensure that:

   a. A physician from the organized service is appointed to act as a liaison between the organized service and the trauma center's trauma service;

   b. The physician in subsection (H)(2)(a) completes:

      i. If the trauma center's designation is for a three-year period, at least 48 hours of trauma-related continuing medical education during the term of the designation;

      ii. If the trauma center's designation is for a one-year period, at least 16 hours of trauma-related continuing medical education during the term of the designation; and

      iii. If the trauma center is designated as a Level I Pediatric trauma center or Level II Pediatric trauma center, at least 12 of the 48 hours required in subsection (H)(2)(b)(i) or four of the 16 hours required in subsection (H)(2)(b)(ii) in pediatric trauma-related continuing medical education; and

   c. If the trauma center is required by Table 13.1 to have a multidisciplinary peer review committee, ensure the physician in subsection (H)(2)(a) attends at least 50% of the meetings of the multidisciplinary peer review committee;

3. Ensure that, when a physician is on-call for general surgery, neurosurgery, or orthopedic surgery, the physician is not on-call or on a back-up call list at another health care institution;

4. Ensure that policies and procedures are established, documented, and implemented for:

   a. Except for a Level IV trauma center, the formulation of blood products to be available during an event requiring multiple blood transfusions for a patient or

patients; and

b. For a Level IV trauma center, the expedited release of blood products during an event requiring multiple blood transfusions for a patient or patients;

5. Ensure that the patient transfer plan required in subsection (G)(1) includes processes for transferring a patient needing:

a. Acute hemodialysis or pediatric trauma care to a hospital providing the required service if the trauma center is designated as a:

i. Level III or Level IV trauma center; or

ii. Level II trauma center and does not provide, as applicable, acute hemodialysis or pediatric trauma care;

b. Burn care as an organized service, acute spinal cord management, microvascular surgery, or replant surgery to a hospital providing the required service if the trauma center is designated as a:

i. Level III or Level IV trauma center; or

ii. Level I or Level II trauma center and does not provide, as applicable, burn care as an organized service, acute spinal cord management, microvascular surgery, or replant surgery; or

c. Another service that the trauma center is not authorized or not able to provide to a hospital providing the required service;

6. Except for a Level IV trauma center or as provided in subsection (I), require that:

a. An emergency medicine physician is present in the emergency department at all times;

b. A surgeon on the trauma team is present in the emergency department:

i. For a patient:

(1) If an adult, with a systolic blood pressure less than 90 mm Hg or, if a child, with confirmed age-specific hypotension;

(2) With respiratory compromise, respiratory obstruction, or intubation;

(3) Who is transferred from another hospital and is receiving blood to maintain vital signs;

(4) Who has a gunshot wound to the abdomen, neck, or chest;

(5) Who has a Glasgow Coma Scale score less than 8 associated with an injury attributed to trauma; or

(6) Who is determined by an emergency department physician to

have an injury that has the potential to cause prolonged disability or death; and

ii. No later than the following times:

(1) For a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, within 15 minutes after notification or at the time the patient arrives in the emergency department, whichever is later; or

(2) For a Level III trauma center, within 30 minutes after notification or at the time the patient arrives in the emergency department, whichever is later; and

c. One of the following anesthesia personnel members is available for an operative procedure on a patient at the indicated time point:

i. For a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, or Level II Pediatric trauma center, an anesthesiologist, anesthesiology chief resident, or certified registered nurse anesthetist is present in the emergency department or in an operating room area awaiting the patient no later than 15 minutes after patient arrival in the emergency department; and

ii. For a Level III trauma center, an anesthesiologist, anesthesiology chief resident, or certified registered nurse anesthetist is present in the emergency department or in an operating room area awaiting the patient no later than 30 minutes after patient arrival in the emergency department;

7. For a clinical capability required for the trauma center according to Table 13.1(C)(3), require that the on-call radiologist, critical care medicine physician, or surgical specialist is available to provide medical services, as applicable to the specialist, for a patient requiring trauma care within 45 minutes after notification; and

8. For personnel members assigned to an operating room team according to subsection (F)(9), require that the personnel members on the operating room team are on the premises of the trauma center while on duty or:

a. For a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, Level II Pediatric trauma center:

i. Are available to provide operative services for a patient requiring trauma care within 15 minutes after notification or patient arrival at the trauma

center, whichever is later; and

ii. Have response times and patient outcomes monitored through the performance improvement program; and

b. For a Level III trauma center or Level IV trauma center, if the Level IV trauma center provides surgical services:

i. Are available to provide operative services for a patient requiring trauma care within 30 minutes after notification or patient arrival at the trauma center, whichever is later; and

ii. Have response times and patient outcomes monitored through the performance improvement program.

I. The Department shall consider a trauma center designated based on meeting the applicable standards specified in this Section and Table 13.1 to be in compliance with subsection (H)(6)(a), (b),or (c), as applicable, if the trauma center has documentation showing that:

1. The individual required to be present at the indicated location and within the indicated time period was present 80% or more of the time, and
2. The trauma center monitors the rate of compliance with subsection (H)(6) and patient outcomes through the performance improvement program.

J. The requirement in subsection (H)(6)(b) applies whether or not the owner of a trauma center allows a surgery resident in the fourth or fifth year of residency training to begin treating a patient described in subsection (H)(6)(b)(i) while awaiting the arrival of the surgeon on the trauma team, as required in subsection (H)(6)(b)(ii)(1) or (2).

K. An ALS base hospital certificate holder that chooses to submit trauma registry information to the Department, as allowed by A.R.S. § 36-2221(A), shall:

1. Include in the ALS base hospital's trauma registry at least the information required in R9-25-1309(A) for each patient who meets one or more of the criteria in subsections (C)(1)(a) through (c), and
2. Comply with the submission requirements in subsections (C)(2) and (3).

Table 13.1. Arizona Trauma Center Standards (A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2225(A)(4))

Key:

E = Essential and required
I(P) = Level I Pediatric trauma center
II(P) = Level II Pediatric trauma center
ICU = Intensive care unit
In-house = On the premises of the health care institution
ISS = Injury severity score, the sum of the squares of the abbreviated injury scale scores of the three most severely injured body regions
Child life = A program of support to injured children and their families to reduce stress and anxiety by:
a. Explaining medical equipment and procedures to children in a non-threatening and age-appropriate manner,
b. Explaining a diagnosis to a child in an age-appropriate manner, and
c. Helping children and their families develop strategies to cope with the diagnosis and expected outcome

Trauma Facilities Criteria	Levels					
	I	I(P)	II	II(P)	III	IV
A. Institutional Organization						
1. Trauma service	E	E	E	E	E	-
2. Trauma program medical director	E	E	E	E	E	-
3. Trauma multidisciplinary peer review committee	E	E	E	E	E	-
B. Hospital Departments/Divisions/Sections						
1. Surgery	E	E	E	E	E	-
2. Neurosurgery	E	E	E	E	-	-
3. Orthopedic surgery	E	E	E	E	E	-
4. Emergency medicine	E	E	E	E	E	-
5. Pediatric emergency department area	-	E	-	E	-	-
6. Anesthesia	E	E	E	E	E	-
C. Clinical Capabilities						
1. Written on-call schedule for each component of the trauma service if a team member is not in-house	E	E	E	E	E	E
2. Physician specialist available 24 hours/day						
a. General surgeon	E	E	E	E	E	-
i. Published back-up schedule	E	E	E	E	-	-
ii. Dedicated to single hospital when on-call	E	E	E	E	-	-
iii. Surgeon credentialed for pediatric trauma care	-	E	-	E	-	-
b. Emergency medicine physician	E	E	E	E	E	-
c. Pediatric emergency medicine physician	-	E	-	-	-	-
3. Specialist on-call and available 24 hours/day						

a.	Orthopedic surgeon	E	E	E	E	E	-
b.	Pediatric-credentialed orthopedic surgeon	-	E	-	E	-	-
c.	Neurosurgeon	E	E	E	E	-	-
d.	Pediatric-credentialed neurosurgeon	-	E	-	E	-	-
e.	Critical care medicine physician	E	E	E	E	-	-
f.	Pediatric-credentialed critical care medicine physician	-	E	-	E	-	-
g.	Radiologist	E	E	E	E	E	
h.	Hand surgeon	E	E	E	E	-	-
i.	Ophthalmic surgeon	E	E	E	E	-	-
j.	Plastic surgeon	E	E	E	E	-	-
k.	Thoracic surgeon	E	E	E	E	-	-
l.	Cardiac surgeon	E	E	-	-	-	-
m.	Obstetrics/gynecologic surgeon	E	E	-	-	-	-
n.	Oral/maxillofacial surgeon (plastic surgeon, otolaryngologist, or oral/maxillofacial surgeon)	E	E	E	E	-	-
4.	Qualified anesthesia personnel member on-call and available 24 hours/day						
a.	Physician or certified nurse anesthetist	E	E	E	E	E	-
b.	Physician or certified nurse anesthetist with a pediatric credential	-	E	-	E	-	-
5.	Volume performance standards:						
a. b. c.	1200 trauma admissions per year, 240 admissions with ISS > 15 per year, or Average of 35 patients with ISS > 15 for each trauma team surgeon per year	E	-	-	-	-	-
d.	200 trauma admissions < 15 years of age per year,	-	E	-	-	-	-
D.	**Facilities/Resources/Capabilities**						
1.	Emergency department						
a.	Designated physician director	E	E	E	E	E	-
b.	Personnel members with pediatric-specific trauma-related training	-	E	-	E	-	-
c.	Resuscitation equipment for patients of all sizes						
i.	Airway control and ventilation equipment	E	E	E	E	E	E
ii.	Pulse oximetry	E	E	E	E	E	E
iii.	Suction devices	E	E	E	E	E	E
iv.	Electrocardiograph-oscilloscope-defibrillator	E	E	E	E	E	E

v. Color-coded, length-based tool to assist with medication dosing and equipment selection for children	E	E	E	E	E	E
vi. Central venous pressure monitoring equipment	E	E	E	E	E	-
vii. Standard intravenous fluids and administration sets	E	E	E	E	E	E
viii. Large-bore intravenous catheters	E	E	E	E	E	E
ix. Sterile surgical sets for:						
(1) Airway control/cricothyrotomy	E	E	E	E	E	E
(2) Thoracostomy	E	E	E	E	E	E
(3) Central line insertion	E	E	E	E	E	-
(4) Thoracotomy	E	E	E	E	E	-
x. Arterial catheters	E	E	E	E	-	-
xi. X-ray availability 24 hours/day	E	E	E	E	E	-
xii. Thermal control equipment						
(1) For patient	E	E	E	E	E	E
(2) For fluids and blood	E	E	E	E	E	E
xiii. Rapid infusion system/capability	E	E	E	E	E	E
xiv. Qualitative end-tidal CO_2 monitoring	E	E	E	E	E	E
d. Communication with EMS personnel	E	E	E	E	E	E
e. Capability to resuscitate, stabilize, and transfer pediatric patients	E	E	E	E	E	E
2. Operating room						
a. Immediately available 24 hours/day	E	E	E	E	-	-
b. Size-specific equipment						
i. Cardiopulmonary bypass	E	E	-	-	-	-
ii. Operating microscope	E	E	-	-	-	-
c. Thermal control equipment						
i. For patient	E	E	E	E	E	E
ii. For fluids and blood	E	E	E	E	E	E
d. X-ray capability including C-arm image intensifier	E	E	E	E	E	-
e. Endoscopes, bronchoscope	E	E	E	E	E	-
g. Craniotomy instruments	E	E	E	E	-	-
h. Equipment for long bone and pelvic fixation	E	E	E	E	E	-
i. Rapid infusion system/capability	E	E	E	E	E	E
3. Postanesthesia recovery room or surgical ICU						

a. Registered nurses available 24 hours/day	E	E	E	E	E	E
b. Equipment for monitoring and resuscitation	E	E	E	E	E	E
c. Intracranial pressure monitoring equipment	E	E	E	E	-	-
d. Pulse oximetry	E	E	E	E	E	E
e. Thermal control equipment						
i. For patient	E	E	E	E	E	E
ii. For fluids and blood	E	E	E	E	E	E
4. ICU or critical care unit for injured patients						
a. Pediatric ICU	-	E	-	E	-	-
b. Registered nurses with trauma-related training	E	E	E	E	E	-
c. Registered nurses with pediatric-specific trauma-related training	-	E	-	E	-	-
d. Designated surgical director or surgical co-director	E	E	E	E	E	-
e. Physician (fourth year of residency training or higher) assigned to surgical ICU service and in-house 24 hours/day	E	E	-	-	-	-
f. Physician (fourth year of residency training or higher) with a pediatric credential assigned to surgical ICU service and in-house 24 hours/day	-	E	-	-	-	-
g. Surgically directed and staffed ICU service	E	E	E	E	-	-
h. Equipment for monitoring and resuscitation	E	E	E	E	E	-
i. Intracranial pressure monitoring equipment	E	E	E	E	-	-
5. Respiratory therapy services (Available 24 hours/day)						
a. Available in-house	E	E	E	E	-	-
b. On-call and available within 45 minutes after notification	-	-	-	-	E	-
6. Radiological services (Available 24 hours/day)						
a. In-house radiology technologist	E	E	E	E	-E	-
b. Radiology technologist on-call and available within 45 minutes after notification	-	-	-	-	-	E
c. Resuscitation equipment for patients of all sizes, as specified in subsection (D)(1)(c)(i) to (v)	E	E	E	E	E	E
d. Angiography	E	E	E	E	-	-
e. Sonography	E	E	E	E	E	-
f. Computed tomography (CT)	E	E	E	E	E	-
i. In-house CT technician	E	E	E	E	-	-

	ii. CT technician on-call and available within 45 minutes after notification	-	-	-	-	E	-
f.	Magnetic resonance imaging	E	E	E	E	-	-
7.	Clinical laboratory service (Available 24 hours/day)						
a.	Standard analyses of blood, urine, and other body fluids	E	E	E	E	E	E
b.	Blood typing and cross-matching	E	E	E	E	E	-
c.	Coagulation studies	E	E	E	E	E	E
d.	Comprehensive blood bank or access to a community central blood bank and adequate storage facilities	E	E	E	E	E	-
e.	Blood gases and pH determinations	E	E	E	E	E	E
f.	Microbiology	E	E	E	E	E	-
8.	Child maltreatment assessment capability	E	E	E	E	E	E
E.	**Rehabilitation Services Specific to the Patient Population**						
1.	Physical therapy	E	E	E	E	E	-
2.	Occupational therapy	E	E	E	E	-	-
3.	Speech therapy	E	E	E	E	-	-
F.	**Social Services Specific to the Patient Population**						
1.	Social services	E	E	E	E	E	-
2.	Child life program	-	E	-	E	-	-
G.	**Performance Improvement**						
1.	Multidisciplinary peer review committee	E	E	E	E	E	-
2.	Performance improvement personnel dedicated to the trauma service	E	E	E	E	-	-

R9-25-1309. Trauma Registry Data (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2221, and 36-2225(A)(5) and (6))

A. A trauma registry established according to R9-25-1308(B)(1) includes the following in the record of a patient's episode of care, as defined in A.A.C. R9-11-101, for each patient meeting the criteria in R9-25-1308(C)(1):

1. An identification code specific to the health care institution that had contact with the patient during the episode of care;
2. Demographic information about the patient:
   a. The unique number assigned by the health care institution to the patient;
   b. A code indicating whether the patient's record will be submitted to the Department as required in R9-25-1308(C)(2);

c. The unique number assigned by the health care institution for the episode of care;

d. The date the patient arrived at the health care institution for the episode of care;

e. For the episode of care, a code indicating whether the patient:

i. Was directly admitted to the health care institution,

ii. Was admitted to the health care institution through the emergency department,

iii. Was seen in the emergency department then transferred to another health care institution by an ambulance service or emergency medical services provider,

iv. Was seen in the emergency department and discharged, or

v. Died in the emergency department or was dead on arrival;

f. The patient's first name, middle initial, and last name;

g. The patient's Social Security Number;

h. The patient's date of birth and age;

i. Codes indicating the patient's gender, race, and ethnicity;

j. The zip code of the patient's residence or, if applicable, an indication of why no zip code was reported; and

k. The city, state, and county of the patient's residence;

3. Information about the occurrence of the patient's injury:

a. The date and time the injury occurred;

b. The ICD-code describing the type of location where the injury occurred;

c. The zip code of the location where the injury occurred;

d. The city, state, and county where the injury occurred;

e. A code indicating whether the patient's injury resulted from blunt force trauma, a penetrating wound, or a burn;

f. The ICD-code indicating the primary mechanism or cause of the patient's injury resulting in the episode of care and the manner or intent through which the injury occurred;

g. A description of the cause and circumstances leading to the patient's injury;

h. Whether the patient was using a protective device or safety equipment at the time of the injury and, if so, the type or types of protective device or safety equipment being used;

i. If the patient was subject to the requirements in A.R.S. § 28-907 at the time of the injury, whether the patient was using a child restraint system, as defined in

A.R.S. § 28-907, at the time of the injury and, if so, the type of child restraint system being used; and

j. If the patient's injury resulted from a motor vehicle crash, a code describing the status of airbag deployment;

4. Information about the patient's arrival at the health care institution:
   a. A code identifying the mode of transportation by which the patient arrived at the health care institution; and
   b. If applicable:
      i. The ambulance service or emergency medical services provider that transported the patient to the health care institution;
      ii. The unique identifier given by the ambulance service or emergency medical services provider to the incident during which the patient received EMS;
      iii. The date the ambulance service or emergency medical services provider transported the patient to the trauma center; and
      iv. If the patient was transferred from another health care institution, the name of the other health care institution;
5. Information about the health care institution's assessment or treatment of the patient in the emergency department:
   a. A code indicating which of the criteria in R9-25-1308(C)(1) the patient met;
   b. A code indicating whether an ambulance service or emergency medical services provider transported the patient to the health care institution and, if so, the criteria used by the transporting ambulance service or emergency medical services provider for transporting the patient to the health care institution;
   c. The date and time the patient arrived at the emergency department of the health care institution for the episode of care;
   d. The date and time the patient died or left the emergency department of the health care institution for the episode of care;
   e. The length of time in hours and in minutes that the patient remained in the emergency department of the health care institution during the episode of care;
   f. If trauma team activation occurred, the time when the last trauma team personnel member arrived at their assigned location in the health care institution;
   g. Whether the patient showed signs of life when the patient arrived at the health care institution;

h. The values of the following for the patient at the time of their first assessment at the health care institution:
   i. Pulse rate;
   ii. Respiratory rate;
   iii. Oxygen saturation;
   iv. Systolic blood pressure; and
   v. Temperature, including the units of temperature and the route used to measure the patient's temperature;

i. A code indicating whether the patient was receiving respiratory assistance at the time the patient's respiratory rate was assessed;

j. A code indicating whether the patient was receiving supplemental oxygen at the time the patient's oxygen saturation was assessed;

k. Codes indicating the Glasgow Coma Score for:
   i. Eye opening,
   ii. Verbal response to stimulus, and
   iii. Motor response to stimulus;

l. The patient's total Glasgow Coma Score;

m. Whether the patient was intubated at the time of the patient's assessments in subsections (A)(5)(h)(ii), (k)(ii), and (l);

n. A code indicating whether a paralytic agent or sedative had been administered to the patient at the time the patient's Glasgow Coma Score was measured;

o. A code indicating another factor that may have affected the patient's Glasgow Coma Score;

p. A revised trauma score for the patient, auto-calculated based on the patient's systolic blood pressure, respiratory rate, and Glasgow Coma Score;

q. A code indicating the status of alcohol use by the patient and, if applicable, the blood alcohol concentration in the patient's blood;

r. A code indicating the status of drug use by the patient and, if applicable, the code for each drug class detected in the patient's blood;

s. A code indicating the disposition of the patient at the time the patient was discharged from the emergency department; and

t. If the patient was transferred to another health care institution upon discharge from the emergency department:
   i. The name of the health care institution to which the patient was

transferred;

ii. The name of the ambulance service or emergency medical services provider providing the interfacility transport;

iii. A code indicating the reason for transfer; and

iv. If there was a delay in transferring the patient to another health care institution, a code indicating the reason for the delay;

6. Information about the patient's discharge from the health care institution:

a. The date and time the patient was discharged from the health care institution;

b. The length of time the patient remained as an inpatient, as defined in A.A.C. R9-10-201, in the health care institution;

c. The length of time the patient remained in the health care institution's intensive care unit;

d. A code indicating whether the patient was alive or dead at the time of discharge from the health care institution;

e. The ICD-code for each injury identified in the patient, including an indication of whether the ICD-code is for:

i. The principle diagnosis, the reason believed by the health care institution to be chiefly responsible for the patient's need for the episode of care; or

ii. A secondary diagnosis, another reason believed by the health care institution to have contributed to the patient's need for the episode of care;

f. The patient's Injury Severity Score;

g. A code indicating the disposition of the patient at the time the patient was discharged from the health care institution;

h. Whether a report of suspected physical abuse was reported to law enforcement or as required by A.R.S. § 13-3620 or 46-454, if applicable, and, if so:

i. Whether an investigation into the suspected physical abuse was initiated by an entity to which the suspected physical abuse was reported; and

ii. If the patient is a child, whether the patient was discharged in the care of a person other than the person responsible for the care of the patient at the time the patient arrived at the health care institution; and

i. If the patient was transferred to a hospital upon discharge from the health care institution:

i. The name of the hospital to which the patient was transferred,

ii. The name of the ambulance service or emergency medical services provider providing the interfacility transport, and

iii. A code indicating the reason for transfer; and

7. Financial information about the episode of care:

a. A code for the primary source of payment for the episode of care;

b. A code for a secondary source of payment for the episode of care, if applicable;

c. The total amount of charges for the episode of care; and

d. The total amount collected by the health care institution for the episode of care.

B. In addition to the information required in subsection (A), a trauma registry established according to R9-25-1308(B)(1) by a Level I trauma center, Level I Pediatric trauma center, Level II trauma center, Level II Pediatric trauma center, or Level III trauma center includes the following in the record of a patient's episode of care, as defined in A.A.C. R9-11-101, for each patient meeting the criteria in R9-25-1308(C)(1):

1. Demographic information about the patient:

a. The country of the patient's residence;

b. The country where the patient was found or from which an ambulance service or emergency medical services provider transported the patient; and

c. Any pre-existing medical conditions diagnosed for the patient, unrelated to the reason for the episode of care;

2. Information about the occurrence of the patient's injury:

a. Whether the time specified according to subsection (A)(3)(a) is the actual time of occurrence or an estimate;

b. The street address of the location where the injury occurred or, if the location at which the injury occurred does not have a street address, another indicator of the location at which the injury occurred;

c. Any additional ICD-code describing the mechanism or cause of the patient's injury resulting in the episode of care and the manner or intent through which the injury occurred;

d. The ICD-code indicating the activity the patient was engaged in that resulted in the patient's injury;

e. If the patient's injury resulted from a crash involving a means of transportation, including a motor vehicle, other motorized means of transportation, watercraft, bicycle, or aircraft, a code describing the type of vehicle in use at the time of the injury and the patient's location in the vehicle;

f. A description of any issues related to a protective device or safety equipment in use at the time of the patient's injury; and

g. Whether the patient's injury occurred during the patient's paid employment and, if so, a code indicating:

i. The type of occupation associated with the patient's employment, and

ii. The patient's occupation;

3. A code indicating whether EMS was provided to the patient and, if applicable, the type of transport provided to the patient;

4. If EMS was provided to the patient, whether a prehospital incident history report was provided to the trauma center and, if so:

a. The date on the prehospital incident history report;

b. The identifying number on the prehospital incident history report assigned by the ambulance service or emergency medical services provider;

c. The date and time the ambulance service or emergency medical services provider was dispatched, as defined in R9-25-901, to the scene;

d. The date and time the ambulance service or emergency medical services provider responded to the dispatch;

e. The date and time the ambulance service or emergency medical services provider arrived at the scene;

f. The date and time the ambulance service or emergency medical services provider established contact with the patient;

g. The date and time the ambulance service or emergency medical services provider left the scene;

h. The date and time the ambulance service or emergency medical services provider arrived at the health care institution that was the transport destination;

i. The date and time the patient's pulse, respiration, oxygen saturation, and systolic blood pressure were first measured;

j. At the date and time the patient's pulse, respiration, oxygen saturation, and systolic blood pressure were first measured, the patient's:

i. Pulse rate,

ii. Respiratory rate,

iii. Oxygen saturation, and

iv. Systolic blood pressure;

k. Whether the patient was intubated at the date and time the patient's pulse,

respiration, and oxygen saturation were first measured;

l. Codes indicating the Glasgow Coma Score for:

i. Eye opening,

ii. Verbal response to stimulus, and

iii. Motor response to stimulus;

m. The patient's total Glasgow Coma Score;

n. A code indicating whether a paralytic agent or sedative had been administered to the patient at the date and time the patient's Glasgow Coma Score was measured;

o. A revised trauma score for the patient, auto-calculated based on the patient's systolic blood pressure, respiratory rate, and Glasgow Coma Score;

p. Codes indicating all airway management procedures performed on the patient by an ambulance service or emergency medical services provider before the patient's arrival at the first health care institution; and

q. Whether the patient experienced cardiac arrest subsequent to the injury before the patient's arrival at the first health care institution;

5. The amount of time that elapsed from the date and time the ambulance service or emergency medical services provider:

a. Was dispatched and the date and time the ambulance service or emergency medical services provider arrived at the scene,

b. Arrived at the scene and the date and time the ambulance service or emergency medical services provider left the scene,

c. Left the scene and the date and time the ambulance service or emergency medical services provider arrived at the transport destination, and

d. Was dispatched and the date and time the ambulance service or emergency medical services provider arrived at the transport destination;

6. Whether the patient arrived at the trauma center for treatment of the injury resulting in the episode of care through an interfacility transport;

7. If the patient arrived at the trauma center through an interfacility transport, the following information about the health care institution at which the patient was seen immediately before arriving at the trauma center:

a. The name of the health care institution;

b. The date and time the patient arrived at the health care institution in subsection (B)(7)(a); and

c. The date and time the patient left the health care institution in subsection

(B)(7)(a);

8. If the patient arrived at the health care institution in subsection (B)(7)(a) through an interfacility transport, the information in subsections (B)(7)(a) through (c) about each health care institution at which the patient was seen for the injury resulting in the episode of care before arriving at the health care institution in subsection (B)(7)(a);
9. If the patient arrived at the trauma center through an interfacility transport, for each health care institution at which the patient was seen for the injury resulting in the episode of care before arriving at the trauma center, information for the first instance of assessing the patient's:
    a. Respiratory rate,
    b. Systolic blood pressure,
    c. The patient's total Glasgow Coma Score, and
    d. Revised trauma score; and
10. Information about the patient's episode of care at the trauma center and the patient's discharge from the trauma center:
    a. The patient's height and weight when the patient arrived at the trauma center;
    b. The number of days the patient spent on a mechanical ventilator;
    c. If applicable, the identification number assigned by a medical examiner or alternate medical examiner, as defined in A.R.S. § 11-591, to the documentation of the patient's autopsy;
    d. The total length of time the patient remained at the trauma center before discharge;
    e. For each ICD-code identified according to subsection (A)(6)(e), a code that reflects the severity of the injury to which the ICD-code refers;
    f. For each ICD-code identified according to subsection (A)(6)(e) that does not include an indication of the part of the patient's body that was injured, a code supplementing the ICD-code that indicates the part of the body that was injured;
    g. For each procedure performed on the patient:
        i. The ICD-code for the procedure,
        ii. The health care institution at which the procedure was performed,
        iii. A code indicating the organized service unit within the health care institution in which the procedure was performed, and
        iv. The date and time the procedure was begun;
    h. Any complications experienced by the patient while the patient remained at the

trauma center;

i. The Abbreviated Injury Scale code indicating the severity of each of the patient's injuries;

j. The Abbreviated Injury Scale code indicating the body region affected by each of the patient's injuries;

k. If the trauma center is designated as a Level I trauma center or Level I Pediatric trauma center, the six-digit Abbreviated Injury Scale code and the software version used to calculate the six-digit Abbreviated Injury Scale code; and

l. The patient's probability of survival.

R9-25-1310. Trauma Registry Data Quality Assurance (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2208(A), 36-2209(A)(2), 36-2220(A), 36-2221, and 36-2225(A)(5) and (6))

A. To ensure the completeness and accuracy of trauma registry reporting, a health care institution submitting trauma registry information to the Department shall allow the Department to review the following, upon prior notice from the Department of at least five business days:

1. The health care institution's trauma registry or other database containing trauma registry information;
2. Patient medical records; and
3. Any record, other than those specified in subsections (A)(1) and (2), that may contain information about diagnostic evaluation or treatment provided to a patient receiving trauma care.

B. Upon prior notice from the Department of at least five business days, a health care institution submitting trauma registry information to the Department shall provide the Department with all patient medical records for a time period specified by the Department, to allow the Department to determine the accuracy and completeness of the information submitted to the trauma registry for patients receiving trauma care during the period.

C. For purposes of subsection (B), the Department considers a health care institution to be in compliance with R9-25-1308(C)(2) if the health care institution submitted to the Department trauma registry information for 97% of the patients receiving trauma care during the period.

D. If trauma registry information submitted to the Department by a health care institution according to R9-25-1308(C)(2) and (3) is not in compliance with requirements in R9-25-1308 or R9-25-1309, the Department shall:

1. Notify the health care institution that the trauma registry information submitted to the Department is not in compliance with requirements in R9-25-1308 or R9-25-1309, and

2, Identify the revisions or actions that are needed to bring the data into compliance with R9-25-1308 and R9-25-1309.

E. A health care institution that has trauma registry information returned, as provided in subsection (D), shall:

1. Revise the trauma registry information as identified by the Department, and
2. Submit the revised data to the Department within 15 business days after the date the Department notified the health care institution according to subsection (D)(1) or within a longer period agreed upon between the Department and the health care institution.

F. Within 15 business days after receiving a written request from the Department that includes a simulated patient medical record, a health care institution submitting trauma registry information to the Department shall prepare and submit to the Department the information required in R9-25-1309, applicable to the Level of health care institution, for the patient described in the simulated patient medical record.

Statutory Authority for the Rules in 9 A.A.C. 25, Article 13

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.

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

(L12, Ch. 94, sec. 5. Eff. until 1/1/24)

A. The director shall:

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

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

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

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

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

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

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

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

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

3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing

medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

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

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

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

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

1. Determines that the rule is not in the public's best interest.

2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.

3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

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

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

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

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

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

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.

2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.

3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2208. <u>Bureau of emergency medical services and trauma system</u>

A. There is established within the department a bureau of emergency medical services and trauma system that is responsible for coordinating, establishing and administering a statewide system of emergency medical services, trauma care and a trauma registry.

B. This chapter does not prevent any individual, law enforcement officer, public agency or member of a city, town, fire district or volunteer fire department from rendering on-site emergency medical care or, if, in terms of the existing medical situation, it is deemed not advisable to await the arrival of an ambulance, from transporting emergency medical patients to a hospital or an emergency receiving facility, except that if any patient objects on religious grounds, that patient shall not be administered any medical treatment or be transported to a hospital or an emergency receiving facility.

C. The director shall develop an annual statewide emergency medical and trauma services plan and submit that plan to the council for review and approval. The statewide plan shall then be submitted to the governor for final adoption. Before submitting the plan to the governor, the director shall accept comments from the authorized local agencies and governmental entities.

D. A local emergency medical services coordinating system shall develop a regional emergency medical services plan that includes a needs assessment and submit the plan to the director and to the authorized local agencies within the area. The regional plans shall be integrated into the statewide plan by the department.

E. The state plan shall contain a budget component for funding local and state emergency medical services systems from the emergency medical services operating fund established pursuant to section 36-2218 based on the needs assessment of the local emergency medical services coordinating system plans. The components shall be included in the department's budget through the normal appropriation process.

36-2221. Trauma center data; requirements; confidentiality; violation; classification

A. Trauma centers shall submit to the department a uniform data set for the trauma patient as prescribed by the department. Advanced life support base hospitals that are not trauma centers may also submit this data to the department. The director shall identify the categories of patients who are to be reported as trauma patients under this section.

B. The department shall provide quarterly trauma system data reports to each hospital and designated trauma center submitting data.

C. The department may authorize other persons and organizations to use state trauma registry data:

1. To study the sources and causes of trauma.

2. To evaluate the cost, quality, efficacy and appropriateness of diagnostic, therapeutic, rehabilitative and preventive services and programs that are related to trauma.

D. Information collected by the state trauma registry that can identify an individual is confidential and may be used only pursuant to this section. A person who discloses confidential information in violation of this section is guilty of a class 3 misdemeanor.

36-2225. Statewide emergency medical services and trauma system; definitions

A. The department shall develop and administer a statewide emergency medical services and trauma system to implement the Arizona emergency medical services and trauma system plan. The department shall adopt rules to establish standards for the following:

1. Injury prevention activities to decrease the incidence of trauma and decrease the societal cost of preventable mortality and morbidity.

2. Public access to prehospital emergency medical services.

3. A statewide network of trauma centers that provide trauma care and to which trauma patients can be transported.

4. A trauma center designation and dedesignation process for health care institutions that provide trauma care. The department may adopt rules that:

(a) Allow for designation based on:

(i) A health care institution’s verification as a trauma facility by a national verification organization.

(ii) A determination by a national verification organization that a health care institution meets the state standards established by rule for designation as a trauma center.

(iii) A determination by the department that a health care institution meets the state standards established by rule for designation as a trauma center.

(b) Require that trauma centers submit data to the trauma registry.

5. Trauma system evaluation and quality review through the collection and analysis of data.

6. Protection of confidential patient care and trauma registry information.

B. For the purposes of this section:

1. "National verification organization" means the American college of surgeons committee on trauma or other nationally recognized organization that verifies the ability of health care institutions to provide trauma services at various levels.

2. "Trauma center" means a health care institution that is designated pursuant to rules adopted by the department to provide a specific level of trauma care.

BOARD OF PHARMACY
Title 4, Chapter 23

Amend: R4-23-1104, R4-23-1106

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: **Sep 6, 2023**

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

FROM: Council Staff

DATE: **July 27, 2023**

SUBJECT: **BOARD OF PHARMACY**
Title 4, Chapter 23

Amend: R4-23-1104, R4-23-1106

Summary:

This regular rulemaking from the Board of Pharmacy seeks to amend two rules in Title 4, Chapter 23 related to Pharmacy Technicians and Pharmacy Technician Trainees and Continuing Education Requirements. These amendments seek to allow a pharmacy technician to administer a vaccine when the pharmacy technician has completed the necessary specified training and the authority to administer the vaccine is delegated by and under the supervision of the pharmacist on duty. These rules were previously made as an emergency rule, and pharmacy technicians will have to cease administering vaccines when the emergency rule expires without an amendment to the current rules.

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 they reviewed and relied upon the following studies:

- A study from Healthypeople.gov focusing on increasing immunization rates to reduce preventable infectious diseases
- An Article on pharmacytimes.com outlining how pharmacy technicians can be certified to administer immunizations
- An Article on info.nhanow.com outlining how Idaho allowed pharmacy technicians to administer immunizations
- A study from sciencedirect.com outlining the role of pharmacy technicians in vaccination services

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

A pharmacy permittee that chooses to allow a pharmacy technician to administer vaccines will incur the cost of ensuring the pharmacy technician is trained and working under the supervision of the pharmacist on duty. The pharmacy permittee will choose to incur these costs because the pharmacy permittee anticipates it will be cost effective to do so. This may improve patient outcomes and satisfaction, increase job satisfaction for pharmacy technicians, and enable pharmacy permittees to make good business decisions that are in the best interest of public health and safety.

Pharmacy permittees, pharmacists, pharmacy technicians, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking. The Board currently permits 1,347 pharmacy permittees in Arizona and licenses 6,687 pharmacists and 11,122 pharmacy technicians.

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 the rule requirements are minimally intrusive and costly. It would be possible to reduce the requirements for a pharmacy technician to become qualified to administer vaccines and to maintain that qualification. However, this approach would not be consistent with the Board's responsibility to protect public health and safety.

6. What are the economic impacts on stakeholders?

A pharmacist on duty charged with supervising a pharmacy technician will be able to delegate vaccine administration to the pharmacy technician after the pharmacy technician is qualified to do so under the rule. This will increase workflow efficiency and free the pharmacist to spend more time on tasks that require the pharmacist's clinical judgment. It may also improve patient outcomes and satisfaction.

A pharmacy technician will be required to invest time in becoming qualified to administer vaccines and will have to redirect two credit hours of continuing education biennially to maintaining that qualification. The pharmacy technician may benefit from increased job satisfaction.

The Board incurred the cost of completing this rulemaking, including the emergency rulemaking, and will incur the cost of implementing and enforcing it. The Board has the benefit of making a rule consistent with the evolving national landscape for pharmacy technicians and enabling pharmacy permittees to make business decisions the permittees determine are consistent with good business practice and the best interest of public health and safety.

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

The Department states that there are no changes between the proposed rulemaking and the final rulemaking.

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

The Board received comments of support from the following five entities: (1) Robert Geddes, of Albertsons Companies Inc; (2) Abby Bownas, of the American Disease Prevention Coalition; (3) Steven C. Anderson, of the National Association of Chain Drug Stores; (4) Lauren Paul, of CVS Health; and (5) Kelly Fine and Michael Baxter, of the American Pharmacists Association. These comments are attached for the Council's review

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

The Board states that the license issued to a pharmacy technician under A.R.S. § 32-1923.01 is not a general permit and that A.R.S. § 32-1923.01 requires the Board to assess individual qualifications before issuing the license.

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 states the rules are not more stringent than corresponding Federal law.

11. Conclusion

This regular rulemaking from the Board of Pharmacy seeks to amend two rules in Title 4, Chapter 23 related to Pharmacy Technicians and Pharmacy Technician Trainees and Continuing Education Requirements. As previously stated, these rules were previously made as an emergency rule and pharmacy technicians will have to cease administering vaccines without an amendment to the current rules.

The Board is seeking an immediate effective date under A.R.S. § 41-1032(A)(1) and (A)(4) because the rules will have a significant positive effect on public health and provide an economic and social benefit to the public with no penalty associated with violation of the rules.

Council staff would also like the Council to know that due to an error with the internal system, Council staff was not made aware of this rulemaking package when it was originally submitted by the Board and this is a contributing factor as to why an immediate effective date is being requested.

Council staff recommends approval.

Arizona State Board of Pharmacy

Physical Address: 1616 W. Adams, Suite 120, Phoenix, AZ 85007
Mailing Address: P.O. Box 18520, Phoenix, AZ 85005
p) 602-771-2727 f) 602-771-2749 www.azpharmacy.gov

June 9, 2023

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations
Chapter 23. Board of Pharmacy

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:

A. Close of record date: The rulemaking record was closed on May 22, 2023, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

   The exemption for rulemaking required under A.R.S. § 41-1039 was provided by Zaida Dedolph, of the Governor's office, in an e-mail dated March 3, 2023. Approval to submit the rulemaking to the Council was provided by Ms. Dedolph in an e-mail dated June 8, 2023.

B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a 5YRR.

C. New fee: The rulemaking does not establish a new fee.

D. Fee increase: The rulemaking does not increase an existing fee.

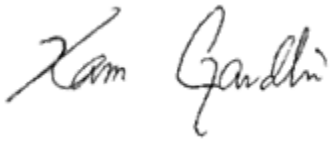
E. Immediate effective date: An immediate effective date is respectfully requested under A.R.S. § 41-1032(A)(1) and (A)(4) because the rules will have a significant positive effect on public health and provide an economic and social benefit to the public with no penalty associated with violation of the rules..

F. Certification regarding studies: I certify that the preamble accurately discloses the studies the Board reviewed in its evaluation of or justification for the rules in this rulemaking.

G. 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 none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the Executive Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
   3. Economic, Small Business, and Consumer Impact Statement;
   4. Public comments

Sincerely,



Kamlesh Gandhi
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-23-1104	Amend
R4-23-1106	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. § 32-1904(A)(1) and (B)(7)

Implementing statute: A.R.S. §§ 32-1923.01 and 32-1925(H)

3. The effective date for the rules:

The Board respectfully requests under A.R.S. § 41-1032(A)(1) and (A)(4) that the rules in this rule package become effective when 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):

The Board respectfully requests under A.R.S. § 41-1032(A)(1) and (A)(4) that the rules become effective when filed with the Office of the Secretary of State. The rules will have significant positive effect on public health by making immunizations more readily available. Being able to obtain immunizations easily is important in protecting and preventing the spread of viruses. This provides an economic and social benefit to the public and there is no penalty associated with violation of the rules. The need for an immediate effective date was not caused by delay or inaction by the Board. The Board did meet with stakeholders to draft this proposed language.

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citation to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 937, April 21, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 893, April 21, 2023

Notice of Emergency Rulemaking: 29 A.A.R. 1196, May 26, 2023

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

Name: Kamlesh Gandhi

Address: 1110 W. Washington Street, Suite 260
Phoenix, AZ 85007

Telephone: (602) 771-2740

Fax: (602) 771-2749

E-mail: kgandhi@azpharmacy.gov

Website: www.azpharmacy.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:

At the request of the Governor's Office and to enable a pharmacy permittee to determine business practices that are in the interest of public health and safety, the Board is amending its rules to allow a pharmacy technician to administer a vaccine when the pharmacy technician has completed specified training and the authority to administer the vaccine is delegated by and under the supervision of the pharmacist on duty. Authorizing a pharmacy technician to administer a vaccine is consistent with the evolving national landscape for pharmacy technicians.

The need to increase the number of persons qualified to administer vaccines became critical when COVID19 reached the U.S. in early 2020. In March 2020, the Secretary of USDHHS issued guidance regarding the PREP Act, which provides qualified persons with liability protection when acting during a public health emergency. The guidance indicated that qualified pharmacy technicians acting under the supervision of a qualified pharmacist were "covered persons" under the PREP Act and authorized to administer both COVID19 vaccines and routine childhood vaccines (See https://www.hhs.gov/sites/default/files/prep-act-guidance.pdf). The authorization provided under the PREP Act preempted state and local law prohibiting persons qualified under the PREP Act from administering COVID19 or routine childhood vaccines.

A recent study concluded that authorizing additional persons to administer vaccines during the COVID19 emergency worked. Hundreds of millions of vaccine doses were administered, averting millions of deaths and hospitalizations and saving trillions in healthcare costs (See https://thehill.com/opinion/healthcare/3835860-getting-vaccinated-at-pharmacies-works-it-could-soon-disappear). Outside of temporary and public health sites, approximately 90 percent of COVID19 vaccines were administered at pharmacies. In spite of this success, when the COVID19 health emergency ends on May 11, 2023, only persons authorized under state law will be able to administer vaccines. Pharmacy technicians are not authorized under Arizona law to administer vaccines and will have to cease doing so on May 11, 2023, unless the changes in this rule package are approved. A 2023 survey of pharmacy law conducted by the National Association of Boards of Pharmacy found pharmacy technicians have vaccine administration authority under state law in 18 states and Guam. These states include Alabama, Colorado, Guam, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Missouri, Nevada, North Carolina, North Dakota, Rhode Island, Utah, Virginia, Washington, Wisconsin, and Wyoming.

To be a pharmacy technician in Arizona, a person must be licensed. A license is issued only if the person completes a training program that meets specified standards and passes a national examination. The licensed pharmacy technician is required to work under the supervision of a pharmacist and to complete 20 contact hours of continuing education every two years (See 4 A.A.C. 23, Article 11). In contrast, a medical assistant in Arizona is not licensed by the state. A medical assistant's education may be obtained through on-the-job training (See A.R.S. § 32-1456(D)). Under the materials incorporated by reference at R4-16-402(A), a medical assistant working under direct supervision may administer injections.

As required under A.R.S. § 41-1039, an exemption for this rulemaking was obtained from Zaida Dedolph, health policy advisor in the governor's office, in an e-mail dated March 3, 2023. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Ms Dedolph in an e-mail dated June 8, 2023.

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:

Vaccines are one of the most cost-effective preventative health measures available and are largely responsible for the increase in life expectancy that occurred during the 20th century. However, infectious diseases remain a major cause of illness, disability, and death. Many of these infectious diseases can be prevented with a vaccine. In the U.S., approximately 42,000 adults and 300 children die each year from vaccine-preventable diseases other than coronavirus diseases (See https://wayback.archive-it.org/5774/20220413183120/https://www.healthypeople.gov/2020/topics-objectives/topic/immunization-and-infectious-diseases).

Because pharmacies in the U.S. are one of the most accessible health destinations for the public, pharmacies have served to increase vaccination rates and improve access to care. Both pharmacists and interns are authorized to administer vaccines in all 50 states and D.C. In the U.S. pharmacies are the second most common location for administering influenza vaccinations to adults, according to data from the 2018-2019 influenza season (See https://www.pharmacytimes.com/view/how-pharmacy-technicians-can-be-certified-to-administer-immunizations-in-2020).

In 2017, after completing a time study that showed a significant amount of a pharmacist's time was spent completing duties that did not require clinical judgment and could be safely performed by a pharmacy technician, Idaho became the first state to allow adequately trained pharmacy technicians to administer immunizations (See https://info.nhanow.com/learning-leading-blog/the-first-pharmacy-technicians-to-give-immunizations-how-idaho-did-it). By 2019, the Idaho board of pharmacy reported the pharmacy technicians in Idaho had administered approximately 25,000 vaccinations with no reported adverse events or errors.

In the January 2022 issue of the Journal of the American Pharmacists Association, there is a report on a review of studies of the role of pharmacy technicians in vaccination services (See https://www.sciencedirect.com/science/article/pii/S1544319121003861). The review supported the effective deployment of pharmacy technicians in delivering vaccination services. The studies found pharmacy technicians delivering vaccination services produced

pharmacy workflow efficiency, pharmacist clinical time, and pharmacy technician job satisfaction. The authors concluded that early adopters of professional practice advancements for pharmacy technician vaccine administration may expand vaccination service capacity efficiently and safely, allowing the pharmacy to reach more patients.

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

   Not applicable

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

   The Board expects the rulemaking to have some economic impact on pharmacy permittees who choose to allow a pharmacy technician to administer vaccines. A pharmacy permittee that chooses to allow a pharmacy technician to administer vaccines will incur the cost of ensuring the pharmacy technician is trained and working under the supervision of the pharmacist on duty. The pharmacy permittee will choose to incur these costs because the pharmacy permittee anticipates it will be cost effective to do so. A pharmacy technician who administers vaccines will be required to redirect two contact hours of continuing education biennially to education about the administration of vaccines.

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

    No changes were made between the proposed and final rules.

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

    The Board received comments regarding the rulemaking from five entities. Each expressed strong support for the rulemaking. The Board appreciates the support.

    Robert Geddes, of Albertsons Companies Inc., indicated the 122 community pharmacies owned and operated by Albertsons have administered more than 1.6 million COVID vaccines in Arizona and that a large percentage of the vaccines were administered by the more than 100 trained pharmacy technicians under federal authority provided by the PREP Act. He indicated pharmacy technicians are an asset in accommodating the increased numbers of individuals requesting immunizations at a pharmacy. The ability to delegate additional functions to a pharmacy technician allows the pharmacist increased flexibility to manage workflow and ensure the pharmacist’s attention is on the highest priority task.

Abby Bownas, of the American Disease Prevention Coalition, emphasized that vaccination is an essential part in maintaining the health and well-being of Arizonans. She indicated that research shows immunization rates for all types of vaccination improve when pharmacists and pharmacy technicians are authorized to vaccinate adults and children. This is especially true in low-income communities. She concluded that allowing pharmacy technicians to administer all recommended vaccines will help achieve access and choice to vaccination health care destinations and ensure the public is as healthy as possible.

Steven C. Anderson, of the National Association of Chain Drug Stores, indicated that pharmacies have been especially effective at connecting patients who are disproportionately impacted by inequitable access to healthcare services to needed vaccine services. Indeed, more than 40 percent of individuals vaccinated at pharmacies are from racial and ethnic minority groups. Leveraging pharmacy technicians to participate in the technical act of vaccine administration is integral to these efforts. An internal survey of NACDS members conducted in March 2022 found that 38 percent of all COVID vaccine doses provided by pharmacies were administered by pharmacy technicians.

Lauren Paul, of CVS Health, reported that pharmacy-based immunizations, which have increased vaccination rates in the US, have been one of the most significant public health achievements in recent years. Studies have shown high acceptance of pharmacy-based immunizations, which are more cost effective than those provided in other settings, including physician offices.

Kelly Fine and Michael Baxter, of the American Pharmacists Association, thanked the Board for the rulemaking, which they said is essential to ensure optimized access to immunizations for Arizonans.

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:

Under A.R.S. § 41-1037(A)(2), the license issued to a pharmacy technician under A.R.S. § 32-1923.01 is not a general permit. A.R.S. § 32-1923.01 requires the Board to assess individual qualifications before issuing the license.

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

This rulemaking is not more stringent than federal law.

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

No analysis was submitted.

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

None

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:

Both rules in this rulemaking were previously made as an emergency rule, published at 29 A.A.R. 1196, May 26, 2023. No changes have been made between the emergency and final rulemaking packages.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 11. PHARMACY TECHNICIANS

Section

ARTICLE 11. PHARMACY TECHNICIANS

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

A. Permissible tasks of a pharmacy technician trainee. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee licensed under R4-23-1103 may assist an intern or pharmacist with the following when applicable to the pharmacy practice site:

1. Record on the original prescription order the serial number of the prescription medication and date dispensed;
2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
3. Record information in the refill record or patient profile;
4. Enter information for a new or refill prescription medication as required under A.R.S. § 32-1964;
5. Type and affix a label for the prescription medication. A pharmacist or intern working under the supervision of a pharmacist shall verify the accuracy of the label as described under R4-23-402(A)(11);
6. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
7. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
8. Prepackage drugs in accordance with R4-23-402(A); and
9. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.

B. Permissible tasks of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:

1. Perform the tasks listed in subsection (A);
2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist or intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;
3. Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D);
4. If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or intern shall verify the accuracy of the label as described under R4-23-402(A)(12);
5. Administer a vaccine when:
    a. Administration of the vaccine is done under an order that complies with A.R.S. § 32-1974 and R4-23-411;
    c. Administration of the vaccine is delegated by and done under the supervision of a pharmacist on duty who is certified under A.R.S. § 32-1974 to administer vaccines; and
    d. There is documentation by the permittee that the pharmacy technician has completed the following:
        i. A practical training program that is approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique and recognition and treatment of emergency reactions to vaccines; and
        ii. Current certification in basic cardiopulmonary resuscitation.

~~5.~~6. Perform a task not related to professional judgment if the task is delegated to the pharmacy technician by the pharmacist on duty after the pharmacist on duty ensures the pharmacy technician is trained to do the task and ~~the evidence~~ there is documentation by the permittee of the training ~~exists in the pharmacy file.~~; and

~~6.~~7. A pharmacist on duty shall not delegate or attempt to delegate the following tasks to a pharmacy technician:

a. Administering an emergency medication,
b. Counseling a patient,
c. Conducting a drug utilization review,
d. Performing any task that requires the exercise of clinical judgment,

e. Issuing a prescription order,

f. Receiving a new prescription order for a controlled substance, or

g. Transferring by telephone an existing prescription order for a controlled substance~~;~~. ~~and~~

~~7. The pharmacist on duty shall not delegate or attempt to delegate to a pharmacy technician the administering of an immunization or vaccine unless authority for the administration is specifically provided by statute or rule.~~

C. A trained and licensed pharmacy technician or pharmacy technician trainee who performs a task as authorized under subsections (A) and (B) shall ensure the task is performed accurately.

D. Prohibited activities. A pharmacy technician or pharmacy technician trainee shall not perform a professional practice reserved for a pharmacist or intern in accordance with R4-23-402 or R4-23-653 unless otherwise allowed by rule.

E. A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.

F. Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the manner described in R4-23-653(A) and comply with policies and procedures outlined in subsection (G) for pharmacy technician and pharmacy technician trainee tasks.

G. A pharmacy permittee or pharmacist-in-change shall ensure policies and procedures required under subsection (F) include the following:

1. For all practice sites:
   a. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;
   b. Employment performance expectations for a pharmacy technician and pharmacy technician trainee;
   c. The tasks a pharmacy technician or pharmacy technician trainee may perform as specified under subsections (A) and (B);
   d. Pharmacist and patient communication;
   e. Reporting, correcting, and avoiding medication and dispensing errors;
   f. Security procedures for:
      i. Confidentiality of patient prescription records, and
      ii. The pharmacy area;

g. Automated medication distribution system;
h. Compounding procedures for pharmacy technicians; and
i. Brief overview of state and federal pharmacy statutes and rules;

2. For community and limited-service pharmacy practice sites:
   a. Prescription dispensing procedures for:
      i. Accepting a new written prescription order,
      ii. Accepting a refill request,
      iii. Selecting a drug product,
      iv. Counting and pouring,
      v. Labeling, and
      vi. Obtaining refill authorization; and
   b. Computer data-entry procedures for:
      i. New and refill prescriptions,
      ii. Patient's drug allergies,
      iii. Drug-drug interactions,
      iv. Drug-food interactions,
      v. Drug-disease state contraindications,
      vi. Refill frequency,
      vii. Patient's disease and medical condition,
      viii. Patient's age or date of birth and gender, and
      ix. Patient profile maintenance; and
3. For hospital pharmacy practice sites:
   a. Medication order procurement and data entry,
   b. Drug preparation and packaging,
   c. Outpatient and inpatient drug delivery, and
   d. Inspection of drug storage and preparation areas and patient care areas.

R4-23-1106. Continuing Education Requirements

A. General. According to A.R.S. § 32-1925(H), the Board shall not renew a pharmacy technician license unless the licensee has during the two years preceding the application for renewal:

1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider, as defined in R4-23-110, and
2. A pharmacy technician licensee is exempt from the continuing education requirement in subsection (A)(1) between the time of initial licensure and first renewal.

B. Special continuing education requirement. During each license renewal period, a pharmacy technician shall not administer a vaccine under R4-23-1104(B)(5) unless the pharmacy technician has participated in at least two contact hours of continuing education activity approved by the Accreditation Council for Pharmacy Education and related to administration of vaccines.

~~**B.**~~ **C.** Valid CEUs. The Board shall:

1. Accept CEUs for continuing education activities sponsored only by an Approved Provider;
2. Accept CEUs accrued during only the two-year period immediately before licensure renewal;
3. Not allow CEUs accrued in a biennial renewal period to be carried forward to the succeeding biennial renewal period;
4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in a continuing education activity sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.

~~**C.**~~ **D.** Continuing education records and reporting CEUs. A pharmacy technician shall:

1. Maintain continuing education records that:
   a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
   b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.

~~D.~~**E.** The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.

~~E.~~**F.** A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

1. Identification of the rulemaking:

At the request of the Governor's Office and consistent with an emergency rulemaking that went into effect on May 4, 2023, the Board is amending its rules to allow a pharmacy technician to administer a vaccine when the pharmacy technician has completed specified training and the authority to administer the vaccine is delegated by and under the supervision of the pharmacist on duty. Authorizing a pharmacy technician to administer a vaccine is consistent with the evolving national landscape for pharmacy technicians.

Because the COVID19 health emergency ended on May 11, 2023, individuals, including pharmacy technicians, who were authorized under the federal PREP Act to administer both COVID19 and routine childhood vaccines are able to continue doing so only if authorized under state law. The Governor's Office, the Office of the Attorney General, and the Board have determined it is in the best interest of public health to expand the number of individuals qualified and authorized under state law to administer a vaccine. A 2023 survey of pharmacy law conducted by the National Association of Boards of Pharmacy found pharmacy technicians have vaccine administration authority under state law in 18 states and Guam. These states include Alabama, Colorado, Guam, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Missouri, Nevada, North Carolina, North Dakota, Rhode Island, Utah, Virginia, Washington, Wisconsin, and Wyoming.

As required under A.R.S. § 41-1039, an exemption for this rulemaking was obtained from Zaida Dedolph, health policy advisor in the governor's office, in an e-mail dated March 3, 2023. Approval to submit this rulemaking to GRRC, as required under A.R.S. § 41-1039(B), was provided by Ms Dedolph in an e-mail dated June 8, 2023.

[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. The conduct and its frequency of occurrence that the rule is designed to change:
Unless this rulemaking is completed, qualified pharmacy technicians working under delegation from and supervision by the pharmacist on duty, who have successfully administered vaccines for three years under the federal PREP Act, will have to cease administering vaccines.

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:
Studies have found pharmacy technicians delivering vaccination services produce pharmacy workflow efficiency, pharmacist clinical time, and pharmacy technician job satisfaction. If pharmacy technicians are no longer able to administer vaccines, the responsibility will fall to pharmacists and interns and take time from activities involving professional clinical judgment. It may also become more difficult for the public to obtain needed vaccines at a pharmacy.

c. The estimated change in frequency of the targeted conduct expected from the rule change:
When the rulemaking is completed, pharmacy technicians will be authorized under state law to continue administering vaccines as they have done under federal law and the emergency rulemaking for more than three years.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:
The Board expects the rulemaking to have some economic impact on pharmacy permittees who choose to allow a pharmacy technician to administer vaccines. A pharmacy permittee that chooses to allow a pharmacy technician to administer vaccines will incur the cost of ensuring the pharmacy technician is trained and working under the supervision of the pharmacist on duty. The pharmacy permittee will choose to incur these costs because the pharmacy permittee anticipates it will be cost effective to do so. A pharmacy technician who administers vaccines will be required to redirect two contact hours of continuing education biennially to education about the administration of vaccines.

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: Kamlesh Gandhi
Address: 1110 W. Washington Street, Suite 260

Phoenix, AZ 85007
Telephone: (602) 771-2740
Fax: (602) 771-2749
E-mail: kgandhi@azpharmacy.gov
Website: www.azpharmacy.gov

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

Pharmacy permittees, pharmacists, pharmacy technicians, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The Board currently permits 1,347 pharmacy permittees in Arizona and licenses 6,687 pharmacists and 11,122 pharmacy technicians.

The rulemaking will enable pharmacy permittees to make business decisions the permittees determine are consistent with good business practice and the best interest of public health and safety. Studies have shown that allowing pharmacy technicians to administer vaccines produces pharmacy workflow efficiency, pharmacist clinical time, and pharmacy technician job satisfaction. A pharmacy permittee that chooses to allow a pharmacy technician to administer vaccines will incur the cost of ensuring the pharmacy technician is trained and working under the supervision of the pharmacist on duty. The pharmacy permittee will choose to incur these costs because the pharmacy permittee anticipates it will be cost effective to do so.

A pharmacist on duty charged with supervising a pharmacy technician will be able to delegate vaccine administration to the pharmacy technician after the pharmacy technician is qualified to so under the rule. This will increase workflow efficiency and free the pharmacist to spend more time on tasks that require the pharmacist's clinical judgment. It may also improve patient outcomes and satisfaction.

A pharmacy technician will be required to invest time in becoming qualified to administer vaccines and will have to redirect two credit hours of continuing education

biennially to maintaining that qualification. The pharmacy technician may benefit from increased job satisfaction.

The Board incurred the cost of completing this rulemaking, including the emergency rulemaking, and will incur the cost of implementing and enforcing it. The Board has the benefit of making a rule consistent with the evolving national landscape for pharmacy technicians and enabling pharmacy permittees to make business decision the permittees determine are consistent with good business practice and the best interest of public health and safety.

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 directly affected by the rulemaking. Its costs and benefits are discussed in item 4. The Board will not need a new full-time employee to implement and enforce the rules.
   b. Costs and benefits to political subdivisions directly affected by the rulemaking:
      Political subdivisions are not directly affected by the rulemaking.
   c. Costs and benefits to businesses directly affected by the rulemaking:
      Pharmacy permittees, pharmacists, and pharmacy technicians are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.
6. Impact on private and public employment:
   The rulemaking will have no direct impact on private and public employment.
7. Impact on small businesses[2]:
   a. Identification of the small business subject to the rulemaking:
      Pharmacists and pharmacy technicians are small businesses subject to this rulemaking.
   b. Administrative and other costs required for compliance with the rulemaking:
      A pharmacy technician is required to work under the supervision of a pharmacist at all times (See R4-23-1104(B)). To be qualified to administer vaccines, a pharmacy technician is required to complete specified education

[2] Small business has the meaning specified in A.R.S. § 41-1001(23).

and to maintain that qualification by completing two credit hours of continuing education biennially regarding vaccine administration. A pharmacy permittee is required to ensure a pharmacy technician is qualified and to maintain documentation of the required training.

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

The Board determined the minimal costs imposed by the rules cannot be reduced and still achieve the goal of making a rule consistent with the evolving national landscape for pharmacy technicians and enabling pharmacy permittees to make business decision the permittees determine are consistent with good business practice and the best interest of public health and safety. Under the rules, a pharmacy permittee is not required to authorize a pharmacy technician to administer vaccines, a pharmacist is not required to delegate administration of vaccines to a pharmacy technician, and a pharmacy technician is not required to become qualified to administer vaccines. The rulemaking simply provides an opportunity.

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

No private persons or consumers are directly affected by the rulemaking. However, consumers are indirectly affected because they may find it more convenient to obtain needed vaccines.

9. Probable effects on state revenues:

There will be no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The Board believes the rule requirements are minimally intrusive and costly. It would be possible to reduce the requirements for a pharmacy technician to become qualified to administer vaccines and to maintain that qualification. However, this approach would not be consistent with the Board's responsibility to protect public health and safety.

32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.

2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.

3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.

4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:

(a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.

(b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.

(c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.

5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.

6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial was based does not alone disqualify the applicant from licensure.

7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.

8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.

9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board,

Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.

10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.

11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

13. Open an investigation only if the identifying information regarding a complainant is provided or the information provided is sufficient to conduct an investigation.

14. Provide notice to an applicant, licensee or permittee using only the information provided to the board through the board's licensing database.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for modernization of pharmacy practice, experimentation or technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.

8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.

9. By rule, approve colleges or schools of pharmacy.

10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.

11. Assist in the continuing education of pharmacists and pharmacy interns.

12. Issue inactive status licenses as provided by this chapter.

13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.

14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.

15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.

16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:

(a) The applicant's name, address, email address, telephone and fax number.

(b) The product's full, common or usual name.

(c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.

(d) The country of export, if applicable.

(e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

(a) A fee to issue certificates of free sale.

(b) A fee to issue good manufacturing practice certifications.

(c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(b) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(c) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(d) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board may issue nondisciplinary civil penalties or delegate to the executive director the authority to issue nondisciplinary civil penalties. The nondisciplinary civil penalties shall be prescribed by the board in rule and issued using a board-approved form. If a licensee or permittee fails to pay a nondisciplinary civil penalty that the board has imposed on it, the board shall hold a hearing on the matter. In addition to any other nondisciplinary civil penalty adopted by the board, either of the following acts or omissions that is not an imminent threat to the public health and safety is subject to a nondisciplinary civil penalty:

1. An occurrence of either of the following:

(a) Failing to submit a remodel application before remodeling a permitted facility.

(b) Failing to notify the board of the relocation of a business.

2. The occurrence of any of the following violations or any of the violations adopted by the board in rule, with three or more violations being presented to the board as a complaint:

(a) The licensee or permittee fails to update the licensee's or permittee's online profile within ten days after a change in contact information, address, telephone number or email address.

(b) The licensee fails to update the licensee's online profile within ten days after a change in employment.

(c) The licensee fails to complete the required continuing education for a license renewal.

(d) The licensee fails to update the licensee's online profile to reflect a new pharmacist in charge within fourteen days after the position change.

(e) The permittee fails to update the permittee's online profile to reflect a new designated representative within ten days after the position change.

(f) The licensee or permittee fails to notify the board of a new criminal charge, arrest or conviction against the licensee or permittee in this state or any other jurisdiction.

(g) The licensee or permittee fails to notify the board of a disciplinary action taken against the licensee or permittee by another regulating agency in this state or any other jurisdiction.

(h) A licensee or permittee fails to renew a license or permit within sixty days after the license or permit expires. If more than sixty days have lapsed after the expiration of a license or permit, the licensee or permittee shall appear before the board.

(i) A new pharmacist in charge fails to conduct a controlled substance inventory within ten days after starting the position.

(j) A person fails to obtain a permit before shipping into this state anything that requires a permit pursuant to this chapter.

(k) Any other violations of statute or rule that the board or the board's designee deems appropriate for a nondisciplinary civil penalty.

E. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

F. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

32-1923.01. Pharmacy technicians; pharmacy technician trainees; qualifications; remote dispensing site pharmacies

(L22, Ch. 59, sec. 72)

A. An applicant for licensure as a pharmacy technician must:

1. Be at least eighteen years of age.

2. Have a high school diploma or the equivalent of a high school diploma.

3. Complete a training program prescribed by board rules.

4. Pass a board-approved pharmacy technician examination.

B. An applicant for licensure as a pharmacy technician trainee must:

1. Be at least eighteen years of age.

2. Have a high school diploma or the equivalent of a high school diploma.

C. Before a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall:

1. Complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

2. Have at least one thousand hours of experience working as a pharmacy technician in an outpatient pharmacy setting under the direct supervision of a pharmacist.

D. A pharmacy technician working at a remote dispensing site pharmacy:

1. Shall maintain an active, nationally recognized pharmacy technician certification approved by the board.

2. May not perform extemporaneous sterile or nonsterile compounding but may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

32-1925. Renewal of license of pharmacists, interns and pharmacy technicians; fees; expiration dates; penalty for failure to renew; continuing education

A. Except for interns and pharmacy technician trainees, the board shall assign all persons who are licensed under this chapter to one of two license renewal groups. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years after the last renewal date. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as odd by way of verbiage or numerical value shall renew it biennially on or before November 1 of the odd-numbered year, two years after the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the license. The board shall vacate a suspension when the licensee pays all past due fees and reinstatement penalties. Reinstatement penalties shall not exceed $350. The board may waive collection of a fee or reinstatement penalty due after suspension under conditions established by a majority of the board.

B. A person shall not apply for license renewal more than sixty days before the expiration date of the license.

C. A person who is licensed as a pharmacist or a pharmacy technician and who has not renewed the license for five consecutive years shall furnish to the board satisfactory proof of fitness to be licensed as a pharmacist or a pharmacy technician. A person whose license has lapsed for two or more renewal cycles shall pay the fees for the two most recent renewal cycles and the penalties before being reinstated.

D. Biennial renewal fees for licensure shall be not more than:

1. For a pharmacist, $250.

2. For a pharmacy technician, $100.

3. For a duplicate renewal license, $25.

E. Fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of a license.

F. The board shall not renew a license for a pharmacist unless the pharmacist has complied with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937.

G. The board shall prescribe intern licensure renewal fees that do not exceed $75. The license of an intern who does not receive specific board approval to renew the intern license or who receives board approval to renew but who does not renew and pay all required fees before the license expiration date is suspended after the license expiration date. The board shall vacate a suspension if the licensee pays all past due fees and penalties. Penalties shall not exceed $350. The board may waive collection of a fee or penalty due after suspension under conditions established by the board.

H. The board shall not renew a license for a pharmacy technician unless that person has a current board-approved license and has complied with board-approved mandatory continuing professional education requirements. If a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

AMERICAN DISEASE PREVENTION COALITION
VACCINES SHOULDN'T WAIT

To: Kamlesh Gandhi, Executive Director, Arizona Board of Pharmacy
From: Abby Bownas, Manager, American Disease Prevention Coalition
Date: May 22, 2023

Re: Strong Support for Pharmacy Technicians Administering Vaccines

Dear Executive Director Gandhi,

We write to express our strong support to the Board of Pharmacy amending Arizona's rules to allow Pharmacy Technicians to administer a vaccine when a pharmacy technician has completed specific training and the vaccine is delegated by and under the supervision of the pharmacist on duty.

Vaccination is an essential part in maintaining the health and well-being of Arizonians by reducing the risk of illness, disability, and death due to vaccine-preventable diseases. Vaccines help prevent serious diseases, including COVID-19, influenza (flu), pneumonia, tetanus, pertussis (whooping cough), herpes zoster (shingles), meningitis, and hepatitis A and B.

Pharmacists and pharmacy technicians play an essential role in preventing and treating disease, especially given their rigorous professional education and training around medications and vaccines, vaccine practice management, adverse reactions to vaccines, vaccine guidance and recommendations, as well as possessing a skill set at administering vaccines and medication. Pharmacists also play an important role within communities by enhancing awareness of vaccines, assessing a patient's immunization status, recommending vaccines, administering vaccines, and reporting vaccinations to the state registry and primary care providers, if applicable, to maintain coordination with all providers— all in alignment with current practice guidelines and recommendations.

The first state to allow pharmacy technician vaccination authorized the scope of practice in 2017. Since then, the practice of pharmacy technicians administering vaccinations has grown, as additional states have granted permanent approval for pharmacy technicians to administer vaccinations. As of January 2023, pharmacy technicians may permanently administer vaccines in 25 states.[1]

In August 2021, the U.S. Department of Health and Human Services (HHS) recognized pharmacies' ability to expand access by extending universal authority for pharmacists to initiate, order, and administer COVID-19 vaccines, COVID boosters and all CDC-recommended and FDA-authorized childhood vaccines for ages 3 years and older. This provision enabled pharmacist and pharmacy technicians throughout the country, including in Arizona, to play an instrumental role in the COVID-19 pandemic vaccination response and are uniquely positioned to continue serving as active participants

[1] https://vaccinesshouldntwait.org/wp-content/uploads/2023/01/ADPC-Technician-Factsheet-2023.pdf

in the vaccination effort. In fact, more than more than 303 million doses of COVID-19 vaccine have been administered and reported by Federal Retail Pharmacy Program participants in the US.[2]

Pharmacies have more locations and greater operating hours than physician practices in low-income communities, highlighting the critical function pharmacies play in expanding vaccination services. Research shows that immunization rates for all types of vaccination improve when pharmacists and pharmacy technicians are authorized to vaccinate adults and children. A recent report showed a marked increase nationwide in people receiving vaccines at pharmacies compared to physician practices in 2020 and 2021. The data showed that nearly 90% of vaccines commonly administered to adults (regardless of location, gender, or income) were offered at pharmacies as opposed to non-pharmacy medical settings in both 2021 and 2022, compared to 50-60% in 2018 and 2019.[3] In Arizona, the percentage of vaccine administration at pharmacy jumped from 58% in 2018, to 87% in 2021.[4]

Now more than ever such allowances should be made permanent to ensure continuity of access to care beyond the pandemic. Allowing pharmacy technicians to administer all ACIP recommended vaccines will help achieve adequate access and choice to vaccination health care destinations within their communities, are protected from vaccine-preventable diseases and are as healthy as possible. We appreciate the opportunity to provide comments and thank you for proposing this important change.

Please reach out with any questions or further information about the work of the American Disease Prevention Coalition.

[2] https://www.cdc.gov/vaccines/covid-19/retail-pharmacy-program/index.html

[3] https://www.iqvia.com/insights/the-iqvia-institute/reports/trends-in-vaccine-administration-in-the-united-states

[4] https://www.iqvia.com/insights/the-iqvia-institute/reports/trends-in-vaccine-administration-in-the-united-states

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

May 19, 2023

Kamlesh "Kam" Gandhi
Executive Director
Arizona State Board of Pharmacy
1110 W. Washington St., Suite 260
Phoenix, AZ 85007
Submitted via email to kgandhi@azpharmacy.gov

Re: Proposed Rule Changes to R4-23-1104; Pharmacy Technicians and Pharmacy Technician Trainees

Dear Dr. Gandhi,

On behalf of our members operating chain pharmacies throughout the state, the National Association of Chain Drug Stores (NACDS) thanks the Arizona State Board of Pharmacy (Board) for the opportunity to comment on the proposed rule changes to R4-23-1104 that would permanently authorize pharmacy technicians to administer vaccines under the delegation and supervision of a pharmacist. As the Board aptly recognizes in the preambles of both the proposed rule and in the corresponding emergency rule posted on the Board website, the federal PREP Act allowances for pharmacy technicians to administer vaccines amplified pharmacies' capacity to deliver vaccine services to the American public. Maintaining these authorities for pharmacy technicians will help support pharmacies' ability to meet increasing public demand for vaccine services and pharmacy care into the future.

NACDS agrees with the Board's rationale and arguments for pursuing this rulemaking. Indeed, leveraging pharmacies – one of the most accessible health destinations for the public – has helped to increase vaccination rates and improve access to care. With the contributions of the full pharmacy team that includes pharmacy technicians, pharmacy providers have provided more than 303 million COVID-19 vaccines to date.[1] Pharmacies have been especially effective at connecting patients who are otherwise disproportionately impacted by inequitable access to healthcare services to needed vaccine services. In fact, more than 40% of individuals vaccinated at pharmacies were from racial and ethnic minority groups.[2] Leveraging pharmacy technicians to participate in the technical act of vaccine administration has been integral to these efforts. Notably, an internal survey of NACDS members conducted in March 2022 found that up to 38% of all COVID-19 vaccine doses provided by pharmacies were administered by pharmacy technicians.[3]

The vital role that pharmacies play in delivering healthcare services to the public is increasingly evident. Cemented by the experience of the COVID-19 pandemic, more and more people rely on their local pharmacy for necessary care access, including for vaccines, testing services, health screenings, and other important clinical care. By permanently codifying the ability of pharmacy technicians to continue to assist pharmacists with vaccine administration efforts, this rulemaking will help to ensure that pharmacies can continue to provide the level of patient care services that the public now expects at their neighborhood pharmacy.

[1] https://www.cdc.gov/vaccines/covid-19/retail-pharmacy-program/index.html

[2] GAO, Federal Efforts to Provide Vaccines to Racial and Ethnic Groups, available at https://www.gao.gov/assets/gao-22-105079.pdf

[3] NACDS conducted a survey of their chain pharmacy membership via an established workgroup in late March 2022. The workgroup is comprised of more than 60 individuals representing about 30 chain pharmacy organizations. The purpose of the survey was to begin estimating pharmacies' impact in responding to the COVID-19 pandemic in topic areas where data was not readily available. The survey response rate was 40%.

For the reasons outlined in these comments, NACDS strongly supports the proposed changes to R4-23-1104 and urges the Board to act expeditiously to finalize this rulemaking. We thank the Board for the opportunity to share our perspectives on this important matter. If you have any questions or need additional information, please contact NACDS' Vice President, State Pharmacy and Advocacy Sandra Guckian at SGuckian@nacds.org or 703-837-4195.

Sincerely,

Steven C. Anderson, FASAE, CAE, IOM
President and Chief Executive Officer
National Association of Chain Drug Stores

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NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate nearly 40,000 pharmacies, and NACDS' chain member companies include regional chains, with a minimum of four stores, and national companies. Chains employ nearly 3 million individuals, including 155,000 pharmacists. They fill over 3 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 900 supplier partners and over 70 international members representing 21 countries. Please visit NACDS.org.

CVSHealth

Lauren Paul, PharmD, MS | 200 Highland Corporate Drive | Woonsocket, RI 02895 | T: 540-604-3661

April 24, 2023

Dr. Kamlesh Gandhi
Executive Director
Arizona State Board of Pharmacy
1110 W Washington St
Suite 260
Phoenix, AZ 85007
kgandhi@azpharmacy.gov

Re: CVS Health's Comments on Proposed Amendments to R4-23-1104 and R4-23-1106

Dear Executive Director Gandhi and the Board of Pharmacy:

I am writing to you in my role as Executive Director of Pharmacy Regulatory Affairs for CVS Health and its family of pharmacies. CVS Health, the largest pharmacy health care provider in the United States, is uniquely positioned to supply diverse access points of care to patients in the state of Arizona through our integrated offerings across the spectrum of pharmacy care. CVS Health appreciates the opportunity to give comments on proposed amendments to R4-23-1104 and R4-23-1105. We would also like to thank the Board for their vigilance to continuously improve the laws and regulations that guide pharmacists, pharmacy interns and pharmacy technicians serving Arizona patients.

Pharmacy-based immunizations have been one of the most significant public health achievements in recent years.[1] The Centers for Disease Control and Prevention (CDC) has lauded community pharmacies' efforts to increase vaccination rates in the United States.[2] Various studies have demonstrated that pharmacists increase vaccination rates against influenza, pneumonia, and herpes zoster.[3-5] Patients have demonstrated high acceptance of pharmacy-based immunizations, with 97% of vaccinated patients' surveyed reporting satisfaction with their experience in the pharmacy.[6] About one in three adults who received the influenza vaccine in recent years did so at their community pharmacy.[7] In addition, studies have demonstrated that pharmacy-based immunizations are more cost-effective than those provided in other settings, including physician offices.[8-9]

CVS Health is supportive of the Board's efforts to amend rules allowing pharmacy technicians to administer vaccines when the pharmacy technician has completed specified training and the authority to administer the vaccine is delegated by and under the supervision of a pharmacist on duty.

CVS Health appreciates the opportunity to give comments on this proposed rule. If you have any questions, please contact me directly at 540-604-3661.

Sincerely,

Lauren Paul, PharmD

Lauren Paul, PharmD, MS
Executive Director, Pharmacy Regulatory Affairs
CVS Health

CVSHealth

Lauren Paul, PharmD, MS | 200 Highland Corporate Drive | Woonsocket, RI 02895 | T: 540-604-3661

References:

1. Dylan Atkinson, Alex Adams, and David Bright. "Should pharmacy technicians administer immunizations?" INNOVATIONS in pharmacy 8.3 (2017): 16-16.
2. Schuchat A. Letter to Pharmacists. September 28, 2015. Available from: https://www.pharmacist.com/sites/default/files/files/CDC%20letter%20to%20pharmacists%20vaccinators.pdf (Accessed April 18, 2023).
3. Fera T, Bluml BM, Ellis WM, el al. The Diabetes Ten City Challenge: Interim clinical and humanistic outcomes of a multisite pharmacy diabetes care program. JAPhA. 48:2. 2008. Available from: http://www.diabetestencitychallenge.com/pdf/DTCCInterimReport.pdf (Accessed April 18, 2023).
4. Taitel M, Cohen E, Duncan I, Pegus C. Pharmacists as providers: Targeting pneumococcal vaccinations to high-risk populations. Vaccine. 29(2011)8073-6.
5. Otsuka S, Tayal NH, Porter K, et al. Improving Herpes Zoster Vaccination Rates Through Use of a Clinical Pharmacist and a Personal Health Record. American Journal of Medicine. September 2013;832.
6. Taitel M, Cohen E, Terranova B, et al. Pharmacists as Immunization Providers: Patient Attitudes and Perceptions. Pharmacy Times. Available from: http://www.pharmacytimes.com/publications/issue/2011/September2011/Pharmacists-as-Immunization-Providers-Patient-Attitudes-and-Perceptions/ (Accessed April 18,, 2023).
7. Lutz R. Pharmacist-Provided Flu Shots Please Patients. Pharmacy Times. June 9, 2015. Available from: http://www.pharmacytimes.com/resourcecenters/cough-cold/pharmacist-provided-flu-shotsplease-patients (Accessed April 18, 2023).
8. Department of Defense. Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/TRICARE: Inclusion of Retail Network Pharmacies as Authorized TRICARE Providers for the Administration of TRICARE Covered Vaccines. Available from: http://www.gpo.gov/fdsys/pkg/FR-2011-07-13/html/2011-17516.htm (Accessed April 18, 2023).
9. Prosser LA, O'Brien MA, Molinari NA, et al. Nontraditional settings for influenza vaccination of adults: costs and cost effectiveness. Pharmacoeconomics. 2008;26(2):163-78.

May 19, 2023

[submitted electronically via: kgandhi@azpharmacy.gov]

Kamlesh Gandhi
Executive Director
Arizona Board of Pharmacy
1110 W. Washington St., Suite 260
Phoenix, AZ 85007

Re: Pharmacy Technicians

Dear Director Gandhi,

The Arizona Pharmacy Association (AzPA) and the American Pharmacists Association (APhA) appreciate the opportunity to provide our support for the proposed rules, R4-23-1104 and R4-23-1106, filed by the Arizona Board of Pharmacy (BOP) regarding pharmacy technician-administered immunizations.

APhA is the largest association of pharmacists in the United States advancing the entire pharmacy profession. APhA represents pharmacists in all practice settings, including community pharmacies, hospitals, long-term care facilities, specialty pharmacies, community health centers, physician offices, ambulatory clinics, managed care organizations, hospice settings, and government facilities. Our members strive to improve medication use, advance patient care, and enhance public health. In Arizona, with 7,730 licensed pharmacists and 11,540 pharmacy technicians, APhA represents pharmacists, students, and pharmacy technicians that practice in numerous settings and provide care to many of your constituents. As the voice of pharmacy, APhA leads the profession and equips members for their role as the medication expert in team-based, patient-centered care. APhA inspires, innovates, and creates opportunities for members and pharmacists worldwide to optimize medication use and health for all.

The Mission of AzPA is to serve and represent all pharmacy professionals by fostering safe and effective medication therapy, promoting innovative practice, and empowering its members to serve the healthcare needs of the public.

Arizona pharmacy technicians have been administering vaccines under the supervision of pharmacists since October 2020, when the U.S. Department of Health and Human Services (HHS) issued guidance related to the Declaration under the Public Readiness and Emergency Preparedness (PREP) Act for Medical Countermeasures Against COVID-19. HHS' guidance authorized pharmacy technicians, acting under the supervision of a pharmacist, to administer FDA-authorized or FDA-licensed COVID-19 vaccines to persons ages three or older and to administer FDA-authorized or FDA-licensed ACIP-recommended vaccines to persons ages three through 18 according to the Advisory Committee on Immunization Practices' (ACIP) standard

immunization schedule.[1] In August 2021, HHS' temporary authority was expanded to authorize pharmacy technicians to administer seasonal influenza vaccines, under the supervision of a pharmacist, to persons ages 19 and older, consistent with ACIP recommendations.[2] As beneficial as HHS' temporary federal authority has been in expanding access to care and relieving some of the burdens on an overstressed healthcare system, this authority is set to expire by December 2024 without further federal or state clarification. R4-23-1104 and R4-23-1106 make a portion of this temporary federal authority permanent under pharmacy technician state scope of practice to minimize interruptions to patient access to vaccines and ensure Arizona can meet its public health care and infrastructure needs.

Thank you again for the opportunity to submit support for R4-23-1104 and R4-23-1106. These rules are essential to ensure optimized access to immunizations for Arizonans. If you have any questions or require additional information, please do not hesitate to contact Kelly Fine, RPh, FAzPA Chief Executive Officer, by email at kelly@azpharmacy.org and E. Michael Murphy, PharmD, MBA, APhA Advisor for State Government Affairs, by email at mmurphy@aphanet.org.

Sincerely,

Kelly Fine, RPh, FAzPA
Chief Executive Officer
Arizona Pharmacy Association
kelly@azpharmacy.org

Michael Baxter
Acting Head of Government Affairs
American Pharmacists Association
mbaxter@aphanet.org

[1] Guidance for PREP Act Coverage for Qualified Pharmacy Technicians and State-Authorized Pharmacy Interns for Childhood Vaccines, COVID-19 Vaccines, and COVID-19 Testing (October 20, 2020), https://www.hhs.gov/sites/default/files/prep-act-guidance.pdf

[2] Eighth Amendment to Declaration Under the PREP Act for Medical Countermeasures Against COVID–19 (August 4, 2021), https://www.govinfo.gov/content/pkg/FR-2021-08-04/pdf/2021-16681.pdf

May 10, 2023

Kamlesh Gandhi, PharmD
Executive Director, Arizona Board of Pharmacy
1616 W. Adams Street, Suite 120
Phoenix, AZ 85007

Re: Rulemaking Chapter R4-23-1104 and R4-23-1106 – Pharmacy Technician Immunization

Dear Dr. Gandhi,

Albertsons Companies Inc., owns and operates 122 community pharmacies under two well known banners: Albertsons and Safeway. To date our pharmacies have administered over 1.6 million COVID vaccines in the state of Arizona in response to the COVID-19 pandemic. A large percentage of these immunizations have been administered by trained pharmacy technicians under authorities granted pursuant to the PREP Act.

We appreciate the Board of Pharmacy and their persistence in finding a solution for technicians to continue assisting with public health and equity by administering immunizations. The recent release of emergency regulations was a great milestone in support of the Board's mission to protect patients. We look forward to these emergency regulations being replaced by permanent regulations.

The purpose of this letter is to express our support for the current proposed rules allowing technicians to perform the administration of immunizations. In response to COVID-19, we trained over 100 technicians to administer immunizations when delegated by the pharmacist under the authority of the PREP Act. Technicians have become an incredible asset in our pharmacies to accommodate the increased numbers of individuals requesting immunizations in our pharmacies. The ability to delegate additional functions to the pharmacy technician allows the pharmacist on duty flexibility to manage the workflow appropriately ensuring their attention is on the highest priority task or patient.

Even before COVID-19, Albertsons has been at the forefront of demonstrating pharmacy technicians' ability to administer immunizations by participating in the first pilot program performed by the Idaho Board of Pharmacy. This program used our pharmacies to prove vaccine administration can be safely delegated by a pharmacist to a trained pharmacy

technician. Then, with COVID-19 and the authority granted by the PREP act, we acted swiftly to train pharmacy technicians across our pharmacy footprint to be able to safely administer immunizations to patients.

We applaud the Arizona Board of Pharmacy for taking steps now to ensure trained pharmacy technicians can play a supportive role beyond the pandemic.

Thank you for the work you are performing. If you have any questions or concerns, please reach out to me at 208-513-3470 or Rob.Geddes@albertsons.com.

Sincerely,

Rob Geddes, PharmD
Director, Pharmacy Legislative and Regulatory Affairs
Albertsons Companies, Inc.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 5, Article 4

Amend: R18-5-401, R18-5-406, R18-5-407, R18-5-409, R18-5-410

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 5, Article 4

Amend: R18-5-401, R18-5-406, R18-5-407, R18-5-409, R18-5-410

Summary:

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend five (5) rules in Title 18, Chapter 5, Article 4 regarding Environmental Review and Certification of Subdivisions. Specifically, this rulemaking seeks to address issues that were identified in the Department's previous Five-Year Review Report (5YRR) for these rules, which was approved by the Council in November 2021, to correct inaccurate and outdated citations throughout these rules as outlined in more detail in Section 6 of the Department's Preamble.

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

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A). The Department indicates the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Additionally, the Department states the rulemaking to correct inaccurate and outdated citations amends or repeals rules made obsolete by repeal or supersession of an

agency's statutory authority pursuant to A.R.S. § 41-1027(A)(1), corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect pursuant to A.R.S. § 41-1027(A)(3), and amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government pursuant to A.R.S. § 41-1027(A)(6). Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)

2. 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.

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

The Department indicates it received one comment regarding this rulemaking, specifically regarding updating the outdated reference to the Uniform Plumbing Code in rule R18-5-410 to the International Plumbing Code. The comment is summarized in Section 11 of the Preamble along with the Department's response. A copy of the written comment has 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.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

6. 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 Safe Drinking Water Act, as amended, and the National Primary Drinking Water Regulations are applicable to the subject of this rule. However, the Department indicates this rulemaking is not more stringent than is required by federal law.

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

Not applicable. The Department indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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

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

9. Conclusion

This expedited rulemaking from the Department seeks to amend five (5) rules in Title 18, Chapter 5, Article 4 regarding Environmental Review and Certification of Subdivisions. Specifically, this rulemaking seeks to address issues that were identified in the Department's previous 5YRR for these rules, which was approved by the Council in November 2021, to correct inaccurate and outdated citations throughout these rules.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Director

July 18, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18, Environmental Quality, Chapters 5, 6, and 11 – "Groundwater Rule Clarification & Citation Clean Up"

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 September 6, 2023.

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. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)

a. The public record closed for all rules on May 22, 2023 at 5:00 p.m.
b. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. This rulemaking clarifies and cleans up the rules in Chapters 5, 6, and 11 by: amending rules made obsolete by repeal; clarifying language of a rule without changing its effect; reducing and consolidating steps, procedures or processes in the rules; and amending rules that are outdated or otherwise no longer necessary for the operation of state government. The purpose of this rulemaking is to support ADEQ's mission of protecting human health and the environment by ensuring groundwater rules are up-to-date.
c. The rulemaking activities relate to five-year review reports as follows: 18 A.A.C. Ch. 5 (August 27, 2021); 18 A.A.C. Ch. 6 (January 28, 2021); 18 A.A.C. Ch. 11 (May 31, 2021).
d. The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
e. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:
   1. This cover letter.

2. The Notice of Final Expedited Rulemakings (NFERMs) for Chapter 5, Chapter 6, and Chapter 11, including the preamble, table of contents, and text of each rule.
3. The written comments received by the Agency on the Notice of Proposed Expedited Rulemaking (NPERM) for Chapter 5 and Chapter 11. ADEQ did not receive any written comments on the NPERM for Chapter 6.
4. ADEQ did not receive an analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. There was no new material incorporated by reference in the rulemakings.
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
   a. Chapter 5:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)
      ii. Implementing statutes (specific): A.R.S. §§ 49-104(B)(11), 49-352(A), 49-353(A)(2), 49-353.01(A), and 49-361
   b. Chapter 6:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)
      ii. Implementing statutes (specific): A.R.S. § 49-303(A)-(B), § 49-305
   c. Chapter 11:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A), and A.R.S. § 49-203(A)(1)
      ii. Implementing statutes (specific): A.R.S. §§ 49-221(A), 49-223, 49-224
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

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,

Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 4. SUBDIVISIONS

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R18-5-401	Amend
R18-5-406	Amend
R18-5-407	Amend
R18-5-409	Amend
R18-5-410	Amend

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

Authorizing statute: A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)

Implementing statute: A.R.S. §§ 49-104(B)(11), 49-352(A), 49-353(A)(2), 49-353.01(A), and 49-361

3. The effective date of the rules:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the notice of final expedited rulemaking with the Secretary of State.

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 expedited rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 876

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 927

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

Name: Jon Rezabek

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

Telephone: (602) 771-8219

E-mail: rezabek.jon@azdeq.gov

Web site: www.azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027(A), to include an explanation about the rulemaking:

An expedited rulemaking is appropriate because it does not: i) increase the cost of regulatory compliance, ii) increase a fee, or iii) reduce procedural rights of persons regulated. ADEQ has authority to engage in this rulemaking in accordance with A.R.S. §§ 41-1027(A). Moreover, one or more of the additional requirements of subsection A are met, including: (A)(1) amending a rule made obsolete by repeal; (A)(3) correcting typographical

errors or clarifies language of a rule without changing its effect; and (A)(6) amending or repealing rules that are outdated, redundant or otherwise no longer necessary.

The following section summarizes the amendments and their justifications.

Section by Section Explanation of Rule Revisions:

R18-5-401. Definitions: R18-5-401(2) contains an outdated reference to A.R.S. § 33-551 *et seq.* which no longer exists and has since been moved to A.R.S. § 33-1201 *et seq.* (Title 33, Chapter 9, Article 1 applies to all condominiums created within the state). In accordance with A.R.S. § 41-1027(A)(6) ADEQ updates the reference from A.R.S. § 33-551 *et seq*. to A.R.S. § 33-1201 *et seq*.

R18-5-406. Public Water Systems: R18-5-406(D) contains an inaccurate citation to A.A.C. R18-4-234 which references a rule that was repealed in 1994 (repeal effective April 28, 1995), determined to be duplicative of federal rules incorporated by reference into Article 1. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), and (A)(3), ADEQ revises the rule as follows: 1) expands the scope of the rule to encompass Chapter 4, Article 1; 2) deletes the reference to R18-4-234 since the rule is repealed and replaced with the federal requirements incorporated by reference into Chapter 4, Article 1; and 3) maintains language referencing the exemption of proposed condominium distribution lines from the requirements of Chapter 4 Articles 1 and 2.

R18-5-406 regulates public water systems in subdivisions and Subsection (D) enforces the compliance of proposed water supply and distribution systems with Arizona's Safe Drinking Water rules in A.A.C. Title 18, Chapter 4, Art. 2. However, it carves out an exception to this requirement for "distribution lines which are a common element of a condominium".

First, expanding the scope of the rule to encompass Article 1 is proper because R18-4-234 was repealed in 1994 as part of ADEQ's overhaul of the drinking water rules in A.A.C. Title 18, Chapter 4, Article 2 in anticipation of a substantive incorporation of EPA's National Primary Drinking Water Regulations (40 C.F.R. 141) into A.A.C. Title 18, Chapter 4, Article 1 (94 A.A.R. 123 (June 30, 1994), first notice appearing in 94 A.A.R. 97 (May 31, 1994)). Many rules in Chapter 4 were repealed upon a determination they'd be duplicative of the federal rules incorporated by reference into Chapter 4, Article 1. Therefore, the Agency proposes expanding the scope of the language in R18-5-406(D) to encompass compliance with both Articles 1 and 2 following the incorporation of the federal rules by reference into Article 1 (94 A.A.R. 123 (June 30, 1994)).

Second, elimination of the citation to R18-4-234 is proper since it was repealed in the aforementioned overhaul of the drinking water rules in 1994. The rule previously set forth requirements for the monitoring of residual disinfectant concentrations in distribution systems. The subject matter of the rule was incorporated by the federal rules throughout Article 1. Therefore, the requirements are preserved within the rule and the expansion of the scope of R18-5-406(D) to include Article 1 ensures the intention of the rule remains unchanged.

Third, ADEQ's retention of the exception in R18-5-406 for proposed distribution lines of a condominium is proper since that exception is preserved in the federal rules incorporated by reference into the A.A.C. Specifically, the Safe Drinking Water Act at 42 U.S.C. § 300g(3) applies the National Primary Drinking Water Regulations to each public water system in each State and sets forth an exception for a public water system that "does not sell water to any person", subsequently promulgated into the National Primary Drinking Water Regulations at 40 C.F.R. § 141.3(c). EPA has interpreted this

exception to encompass private distribution lines for a condominium. Furthermore, the Arizona Administrative Code incorporates by reference 40 C.F.R. § 141 Subpart (A) into Title 18, Chapter 4, Article 1, R18-4-103. Therefore, R18-5-406's exemption of condominium lines from the requirements of Chapter 4 Articles 1 and 2 is retained absent the citation to R18-4-234.

Consequently, the updated rule will read: "Proposed water supply and distribution systems shall comply with A.A.C. Title 18, Chapter 4, Articles 1 and 2, except those distribution lines which are a common element of a condominium shall be exempt~~. from A.A.C. R18-4-234~~."

R18-5-407. Public Sewerage Systems: R18-5-407 contains: 1) an inaccurate reference in Subsection (C) to A.A.C. R18-5-811, and 2) outdated references to Title 18 Chapter 9, Article 8 in Subsections (C), (D)(1) & (2), and (E)(1) & (2). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), and (A)(3), ADEQ updates the reference in Subsection (C) and removes the outdated citations in Subsections (C), (D), and (E).

First, in Subsection (C), the citation to A.A.C. R18-5-811, is facially inaccurate as Article 8 does not exist within current or past versions of Chapter 5. Accordingly, the cross-reference should, instead, refer to Chapter 9, reading "R18-9-811". This determination is supported by Subsection (C), (D), and (E) of the rule which all reference Chapter 9, Article 8. Therefore, the citation to "R18-5-811" should actually reference "R18-9-811". Even so, R18-9-811 was repealed in January 2001 (NFR 7 A.A.R. 235). The rule was later encompassed into A.A.C. 18-5-502(C). This change is evidenced in the language of both rules: now-repealed R18-9-811, titled "Separation of water and sewer mains" restricted certain design elements of a water main, setting forth separation requirements in order to "protect public water systems from possible contamination"; similarly, R18-5-502(C), restricts water main design elements and sets separation requirements, stating, "Water and sewer mains shall be separated in order to protect public water systems from possible contamination". Therefore, ADEQ updates R18-5-407(C)'s reference to R18-5-811 to the current and correct location of the subject matter at R18-5-502(C).

Second, the repeal of Chapter 9 Article 8 renders any reference to it outdated. The 2001 rulemaking at 7 A.A.R. 235 repealed the entirety of Article 8 – Sewerage Construction Program – and incorporated relevant aspects of the rule into the Aquifer Protection Permit Program located in the remaining Articles of Chapter 9. Therefore, the references to Title 18 Chapter 9, Article 8 in Subsections (C), (D)(1) & (2), and (E)(1) & (2) are updated to read, broadly "Title 18 Chapter 9".

R18-5-409. Refuse Disposal: R18-5-409(A) incorrectly references A.A.C. Title 18, Chapter 8, Article 5 which was recodified in the year 2000 to Title 18, Chapter 13, Article 3. ADEQ therefore updates the reference in the rule in accordance with A.R.S. § 41-1027(A)(6).

R18-5-410. Condominiums: R18-5-410(A) contains: 1) an outdated reference to A.A.C. R9-1-412(D); and 2) incorrect references to the Uniform Plumbing Code. Therefore, in accordance with A.R.S. § 41-1027(A)(3), and (A)(6), ADEQ updates the reference in R9-1-412(D) and changes the language in R18-5-410(A) from "…Uniform Plumbing Code adopted by reference in A.A.C. R9-1-412(D)..." to "International Plumbing Code adopted by reference in A.A.C. R9-10-104.01...".

First, the reference to A.A.C. R9-1-412(D) is currently outdated in accordance with a Notice of Final Expedited Rulemaking at 25 A.A.R. 3481 (December 6, 2019) (action amending Title 9, Chapter 10, Article 1). Specifically, the Agency moved applicable requirements from A.A.C. R9-1-411 and R9-1-412 into a new Section, titled "Codes and

Standards", located at R9-10-104.01. Therefore, upon November 5, 2019, the effective date of the rulemaking, any cross-references to R9-1-412, including the one at issue in R18-5-410(A), became outdated and should instead reference R9-10-104.01.

Second, the reference to the "Uniform Plumbing Code" within R18-5-410(A) is inaccurate. The current applicable cross-reference to the Codes and Standards at R9-10-104.01(B) incorporates, instead, the International Plumbing Code in accordance with a Notice of Final Rulemaking (NFRM) at 13 A.A.R. 4505 (December 21, 2007) (updating the codes and standards by "incorporating by reference the…International Plumbing Code"). The rationale provided in the NFRM states, "The Department is updating the codes and standards in R9-1-412 to reflect current industry standards and to create more consistency between [state and local jurisdictions]" (13 A.A.R. 4506 (December 21, 2007)).

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

Not applicable.

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:

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

11. The Agency's summary of the public or stakeholder comments or objections made about the expedited rulemaking and the agency response to the comments:

The Agency received one public comment on A.A.C. R18-5-410.

Comment: "*I am reviewing the proposed rulemaking which changes references to the adopted plumbing code for condominium water distribution lines. The rule would reference the International Plumbing Code in place of the Uniform Plumbing Code. Is this because the state adopts the International Residential Code and is seeking to create more consistency between codes? Or rather, are there provisions in the Uniform Plumbing Code that do not adequately address water distribution lines and wastewater drain lines?*"

Agency Response: The code update from the Uniform Plumbing Code to the International Plumbing Code in the rule is consistent with the Arizona Administrative Code in which the International Plumbing Code is incorporated by reference in A.A.C. R9-10-104.01(B)(6). The reference to the Uniform Plumbing Code in R18-5-410 is outdated because, following its adoption on June 21, 1978, the Codes and Standards have been consistently updated to reflect the International Plumbing Code which, according to a 2007 Notice of Final Rulemaking, "reflect[s] current industry standards" and "create[s] more consistency between state codes and standards and the codes and standards currently adopted by or planned to be adopted by many local jurisdictions" (13 A.A.R. 4505 (December 21, 2007)). This is

supported by the termination of the Arizona Uniform Plumbing Code – which was based on the 1994 Uniform Plumbing Code - in A.R.S. 41-3007.06, effective January 1, 2008. The 2006 version of the International Plumbing Code was then incorporated into the Arizona Administrative Code (A.A.C.) pursuant to a Notice of Final Rulemaking, 13 A.A.R. 4505 (December 21, 2007). The Department of Health Services consistently updates the Codes and Standards rule with the most up-to-date version of the codes, most recently incorporating the 2018 version of the International Plumbing Code (25 A.A.R. 3481 (December 6, 2019)) into a new section at A.A.C. R9-10-104.01.

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 statutes applicable specifically to ADEQ or this specific rulemaking.

a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:

This rule does not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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:

The Safe Drinking Water Act, as amended, and the National Primary Drinking Water Regulations are applicable to the subject of this rule. This rulemaking is not more stringent than is required by federal law.

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

Not applicable.

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

Not applicable.

14. Whether the rules were previously made, amended, or repealed as emergency rules. 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:

The rules were not previously made as emergency rules.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 4. SUBDIVISIONS

Section
R18-5-401. Definitions
R18-5-406. Public ~~w~~Water ~~s~~Systems
R18-5-407. Public ~~s~~Sewerage ~~s~~Systems

R18-5-409. Refuse ~~d~~Disposal
R18-5-410. Condominiums

ARTICLE 4. SUBDIVISIONS

R18-5-401. Definitions

In this Article unless the context otherwise requires:

1. "Approved" or "approval" means approved in writing by the Department.
2. "Condominium" means a subdivision established as a horizontal property regime pursuant to A.R.S. § ~~33-551 et seq.~~ 33-1201 *et seq.*
3. "Department" means the Department of Environmental Quality or its designated representative.
4. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
5. "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
6. "Subdivision" has the meaning defined in A.R.S. § 32-2101.

R18-5-406. Public ~~w~~Water ~~s~~Systems

A. Where water from an approved public water system is proposed for use in a subdivision, the inside diameter, length, and location of all proposed and existing water mains and valves necessary to serve each and every lot shall be shown on the subdivision plat. If the existing main to which a connection will be made is not immediately adjacent to the property, the direction and distance shall be indicated on the plat by an arrow or other suitable means.

B. A letter shall be obtained and submitted with the application for approval of the subdivision from responsible officials of the water system indicating that an agreement has been reached to supply water to each individual lot in the subdivision.

C. Where the owner of a subdivision, or other interested person, firm, company or corporation, proposes to develop a source or sources of supply and to construct a distribution system to furnish water to the subdivision, either free or for charge, complete details of the proposed water system including plans and specifications shall be furnished. Department approval of the supply and proposed system shall first be obtained before an approval for the sale of lots will be granted. The installation of such facilities shall be in accordance with the plans, and any
revisions thereof, approved by the Department.

D. Proposed water supply and distribution systems shall comply with A.A.C. Title 18, Chapter 4, Articles 1 and 2, except those distribution lines which are a common element of a condominium shall be exempt~~ from A.A.C. R18-4-234.~~"

E. Where water from an approved public water system is proposed for use in a subdivision, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public water system is either:

1. in compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; or 2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

F. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the

Department of Real Estate of such action if the public water system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:

1. is compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; nor 2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

R18-5-407. Public ~~s~~Sewerage ~~s~~Systems

A. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, it shall be necessary to show lines indicating the approximate location and size of the sewers on the subdivision plat.

B. Where the proposed sewers will connect to an existing public sewerage system, a letter from officials of the system shall be required stating that acceptable plans have been submitted and that the subdivider has been granted permission to connect to and become a part of the public sewerage system.

C. Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, ~~Article 8,~~ except those drain lines which are a common element of a condominium shall be exempt from ~~R18-5-811~~ R18-5-502(C).

D. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public sewerage system is either:

1. in compliance with the provisions of A.A.C. Title 18, Chapter 9~~, Article 8~~; or

2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9~~, Article 8~~ under a schedule approved by the Department.

E. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public sewerage system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:

1. In compliance with the provisions of A.A.C. Title 18, Chapter 9~~, Article 8~~; nor

2. Making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9~~, Article 8~~ under a schedule approved by the Department.

R18-5-409. Refuse ~~d~~Disposal

A. The storage, collection, transportation and disposal of refuse and other objectionable wastes shall be governed by A.A.C. ~~Title 18, Chapter 8, Article 5~~ Title 18, Chapter 13, Article 3.

B. Where an approved community or private refuse collection service is available, arrangements shall be made to have this service furnished to the subdivision. A letter, from the community or private collection company, stating that the collection service will be made available to the subdivision, is required.

C. Where refuse collection service is not available, it will be the responsibility of the subdivider to notify each purchaser or tenant that the hauling of all refuse is an individual responsibility and that all refuse must be properly stored pending removal and disposed of at disposal areas specified in the plan approved by the Department.

D. Where a collection service or an existing approved disposal area is not available to the subdivision, a plan approval will not be granted unless a separate disposal area is provided by the subdivider or arrangements are made to utilize a new, conveniently located disposal area. Such arrangements shall include, but not be limited to, the written permission of the person responsible for the operation of the new site.

R18-5-410. Condominiums

A. New water distribution lines and new wastewater drain lines which are to be used as a common element of a condominium and are not under the ownership and control of a public utility shall be constructed in accordance with applicable provisions of the ~~Uniform Plumbing Code adopted by reference in A.A.C. R9-1-412(D)~~ International Plumbing Code adopted by reference in A.A.C. R9-10-104.01, including the minimum standards for construction contained therein.

B. Plans to be submitted shall include inside diameter, length and location of all proposed and existing common usage water distribution lines and inside diameter, length, slope and location of all proposed and existing common usage wastewater drain lines necessary to serve each and every unit. Plans and specifications should be submitted with sufficient detail to indicate compliance with subsection (A) above.

C. Appropriate sections of the covenants shall be submitted that indicate adequate provisions have been made for the maintenance of water distribution lines and wastewater drain lines in common usage.

D. Approval of existing housing to be converted to condominiums is conditioned upon the water distribution system and wastewater drainage system being:

1. Approved in writing at the time of original construction by the local building inspection authority, or
2. Currently operating under a permit issued by a local building inspection authority, or
3. Certified to be adequate by an Arizona registered professional engineer who has affixed his signature and seal to as-built plans submitted for approval.

Gmail

Natalie Kilker <kilker.natalie@azdeq.gov>

Fwd: Rulemaking: R18-5-410. Condominiums

1 message

Jon Rezabek <rezabek.jon@azdeq.gov> Wed, Apr 26, 2023 at 1:49 PM
To: Natalie Kilker <kilker.natalie@azdeq.gov>

We need to draft a response to Ms. Kaeini's inquiry below.

Jon Rezabek
Environmental Science Specialist

Groundwater Protection - Water Quality Division

Ph: 602-771-8219

azdeq.gov

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Reply Forward

---------- Forwarded message ---------
From: **Christina Kaeini** <Christina.Kaeini@iapmo.org>
Date: Wed, Apr 26, 2023 at 12:37 PM
Subject: Rulemaking: R18-5-410. Condominiums
To: rezabek.jon@azdeq.gov <rezabek.jon@azdeq.gov>

Hello,

I am reviewing the proposed rulemaking which changes references to the adopted plumbing code for condominium water distribution lines (AZ ADC R18-5-401, 406, 407, 409, 410). The rule would reference the International Plumbing Code in place of the Uniform Plumbing Code. Is this because the state adopts the International Residential Code and is seeking to create more consistency between codes? Or rather, are there provisions in the Uniform Plumbing Code that do not adequately address water distribution lines and wastewater drain lines?

Any insight or information you can share would be greatly appreciated. Thank you!

Christina Kaeini

Director of Government Relations

The IAPMO Group

737-280-8809

www.Twitter.com/IAPMOGR

www.UniformCodes.org

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

R18-5-301. Definitions
In addition to the definitions established in R18-9-101, the following terms apply to this Article:

1. "Certified Areawide Water Quality Management Plan" means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.
2. "Designated management agency" means those entities designated in a Certified Areawide Water Quality Management Plan to manage sewage treatment facilities and sewage collection systems in their respective area.
3. "Designated water quality planning agency" means the single representative organization designated by the Governor under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4) as capable of developing effective areawide sewage treatment management plans for the respective area. The state acts as the planning agency for those non-tribal portions of the state for which there is no designated water quality planning agency.
4. "Facility Plan" means the plans, specifications, and estimates for a proposed sewage treatment facility, prepared under Section 201 and 203 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), and submitted to the Department by and for a designated management agency.
5. "General Plan" means a municipal statement of land-development policies that may include maps, charts, graphs, and text that list objectives, principles, and standards for local growth and development enacted under state law.
6. "Service area" means the geographic region specified for a designated management agency by the applicable Certified Areawide Water Quality Management Plan, Facility Plan, or General Plan.
7. "State water quality management plan" means the following elements:
   a. Certified Areawide Water Quality Management Plans and amendments;
   b. Water quality rules and laws;
   c. Final total maximum daily loads approved by the United States Environmental Protection Agency for impaired waters;
   d. Water quality priorities established by the Department;
   e. Intergovernmental agreements between the Department and a designated water quality planning agency or a designated management agency; and
   f. Active management area plans adopted by the Department of Water Resources.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-302. Certified Areawide Water Quality Management Plan Approval
A designated water quality planning agency shall submit a proposed Certified Areawide Water Quality Management Plan or plan amendment to the Director for review and approval. Upon approval, the Governor or the Governor's designee shall:

1. Certify that the plan or plan amendment is incorporated into and is consistent with the state water quality management plan, and
2. Submit the plan or plan amendment to the United States Environmental Protection Agency for approval.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-303. Determination of Conformance
All sewage treatment facilities, including an expansion of a facility, shall, before construction, conform with the Certified Areawide Water Quality Management Plan, Facility Plan, and General Plans as specified in subsections (1) and (2).

1. The Department shall make the determination of conformance if the sewage treatment facility or expansion of the facility conforms with the Certified Areawide Water Quality Management Plan and Facility Plan that prescribe a configuration for sewage treatment and sewage collection system management by a designated management agency within the service area.
2. If the condition specified in subsection (1) is not met, the Department shall make the determination of conformance as follows:
   a. If no Facility Plan is applicable and a Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall rely on the Certified Areawide Water Quality Management Plan for the determination of conformance.
   b. If no Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall make the determination of conformance based on conformance with applicable General Plans and after conferring with the designated water quality planning agency for the area and any responsible and affected governmental unit.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

ARTICLE 4. SUBDIVISIONS

R18-5-401. Definitions
In this Article unless the context otherwise requires:

1. "Approved" or "approval" means approved in writing by the Department.
2. "Condominium" means a subdivision established as a horizontal property regime pursuant to A.R.S. § 33-551 et seq.
3. "Department" means the Department of Environmental Quality or its designated representative.
4. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
5. "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
6. "Subdivision" has the meaning defined in A.R.S. § 32-2101.

Historical Note
Correction in subsection (E) citation to A.R.S. should have read § 32-2101. Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1011 renumbered without change as Section R18-5-401 (Supp. 89-2).

R18-5-402. Approval of plans required

A. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, or offered to the public in any manner, and no permanent building shall be erected thereon until plans and specifications for the water supply, sewage disposal and method of garbage disposal to be provided in or to serve such subdivision shall have been submitted to and approved by the Department.

B. The plans of any proposed water supply and sewage disposal system shall be submitted in quadruplicate on a plat of the subdivision as recorded, or as will be recorded, in the office of the county recorder.

Historical Note
Former Section R9-8-1012 renumbered without change as Section R18-5-402 (Supp. 89-2).

R18-5-403. Application for approval

A. An application for approval, prepared in duplicate on forms furnished by the Department, shall be filed at the time the plans are submitted for approval. The form shall be completely filled out unless indicated otherwise.

B. The distance to the nearest public water supply main and to a sewer main of a municipal or community system shall be given.

Historical Note
Former Section R9-8-1013 renumbered without change as Section R18-5-403 (Supp. 89-2).

R18-5-404. Size of lots

The minimum size lot approved by the Department will be governed largely by the area necessary for the safe accommodation of individual wells and/or sewage disposal systems. Where both the water supply and sewage disposal system must be developed on the same lot, the minimum size shall be at least one acre, excluding streets, alleys and other rights-of-way. Where water from a central system is provided for residential uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system based on a four-bedroom house within the bounds of the property allowing a minimum of five feet distance to the property lines. Where lots are zoned for commercial uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system within the bounds of the property allowing a minimum of five feet distance to the property lines.

Historical Note
Former Section R9-8-1014 renumbered without change as Section R18-5-404 (Supp. 89-2).

R18-5-405. Responsibility of subdivider

Where plans for a subdivision include a public water supply system, or public sewerage system, it shall be the responsibility of the subdivider to provide the facilities to each lot in the subdivision prior to human occupancy. The installation of such facilities shall be in accordance with plans, or any revisions thereof, approved by the Department.

Historical Note
Former Section R9-8-1015 renumbered without change as Section R18-5-405 (Supp. 89-2).

R18-5-406. Public water systems

A. Where water from an approved public water system is proposed for use in a subdivision, the inside diameter, length, and location of all proposed and existing water mains and valves necessary to serve each and every lot shall be shown on the subdivision plat. If the existing main to which a connection will be made is not immediately adjacent to the property, the direction and distance shall be indicated on the plat by an arrow or other suitable means.

B. A letter shall be obtained and submitted with the application for approval of the subdivision from responsible officials of the water system indicating that an agreement has been reached to supply water to each individual lot in the subdivision.

C. Where the owner of a subdivision, or other interested person, firm, company or corporation, proposes to develop a source or sources of supply and to construct a distribution system to furnish water to the subdivision, either free or for charge, complete details of the proposed water system including plans and specifications shall be furnished. Department approval of the supply and proposed system shall first be obtained before an approval for the sale of lots will be granted. The installation of such facilities shall be in accordance with the plans, and any revisions thereof, approved by the Department.

D. Proposed water supply and distribution systems shall comply with A.A.C. Title 18, Chapter 4, Article 2, except those distribution lines which are a common element of a condominium shall be exempt from A.A.C. R18-4-234.

E. Where water from an approved public water system is proposed for use in a subdivision, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public water system is either:
1. in compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

F. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public water system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
1. is compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; nor
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

Historical Note
Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1021 renumbered without change as Section R18-5-406 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-407. Public sewerage systems

A. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, it shall be necessary to show lines indicating the approximate location and size of the sewers on the subdivision plat.

B. Where the proposed sewers will connect to an existing public sewerage system, a letter from officials of the system shall be required stating that acceptable plans have been submitted and that the subdivider has been granted permission to connect to and become a part of the public sewerage system.

C. Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, Article 8, except those drain lines which

are a common element of a condominium shall be exempt from R18-5-811.

D. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public sewerage system is either:
1. in compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; or
2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

E. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public sewerage system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
1. In compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; nor
2. Making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

Historical Note
Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1026 renumbered without change as Section R18-5-407 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-408. Individual sewage disposal systems

A. Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.

B. Where soil conditions and terrain features or other conditions are such that individual sewage disposal systems cannot be expected to function satisfactorily or where groundwater or soil conditions are such that individual sewage disposal systems may cause pollution of groundwater, they are prohibited.

C. Where such installations may create an unsanitary condition or public health nuisance, individual sewage disposal systems are prohibited.

D. The use of cesspools is prohibited.

E. Where an individual sewage disposal system is proposed, the following conditions shall be satisfied:
1. A geological report shall be made by an engineer, geologist or other qualified person. The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that individual disposal systems could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
2. Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of individual sewage disposal systems.
3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.

Historical Note
Former Section R9-8-1027 renumbered without change as Section R18-5-408 (Supp. 89-2).

R18-5-409. Refuse disposal

A. The storage, collection, transportation and disposal of refuse and other objectionable wastes shall be governed by A.A.C. Title 18, Chapter 8, Article 5.

B. Where an approved community or private refuse collection service is available, arrangements shall be made to have this service furnished to the subdivision. A letter, from the community or private collection company, stating that the collection service will be made available to the subdivision, is required.

C. Where refuse collection service is not available, it will be the responsibility of the subdivider to notify each purchaser or tenant that the hauling of all refuse is an individual responsibility and that all refuse must be properly stored pending removal and disposed of at disposal areas specified in the plan approved by the Department.

D. Where a collection service or an existing approved disposal area is not available to the subdivision, a plan approval will not be granted unless a separate disposal area is provided by the subdivider or arrangements are made to utilize a new, conveniently located disposal area. Such arrangements shall include, but not be limited to, the written permission of the person responsible for the operation of the new site.

Historical Note
Former Section R9-8-1031 renumbered without change as Section R18-5-409 (Supp. 89-2).

R18-5-410. Condominiums

A. New water distribution lines and new wastewater drain lines which are to be used as a common element of a condominium and are not under the ownership and control of a public utility shall be constructed in accordance with applicable provisions of the Uniform Plumbing Code adopted by reference in A.A.C. R9-1-412(D), including the minimum standards for construction contained therein.

B. Plans to be submitted shall include inside diameter, length and location of all proposed and existing common usage water distribution lines and inside diameter, length, slope and location of all proposed and existing common usage wastewater drain lines necessary to serve each and every unit. Plans and specifications should be submitted with sufficient detail to indicate compliance with subsection (A) above.

C. Appropriate sections of the covenants shall be submitted that indicate adequate provisions have been made for the maintenance of water distribution lines and wastewater drain lines in common usage.

D. Approval of existing housing to be converted to condominiums is conditioned upon the water distribution system and wastewater drainage system being:
1. Approved in writing at the time of original construction by the local building inspection authority, or
2. Currently operating under a permit issued by a local building inspection authority, or
3. Certified to be adequate by an Arizona registered professional engineer who has affixed his signature and seal to as-built plans submitted for approval.

Historical Note
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1032 renumbered without change as Section R18-5-410 (Supp. 89-2).

R18-5-411. Violations
Any person, firm, company or corporation who offers for sale, lease or rent any tract of land contrary to these regulations shall be prosecuted in accordance with A.R.S. § 49-142 or as otherwise may be provided by law.

Historical Note
Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1036 renumbered without change as Section R18-5-411 (Supp. 89-2). Amended effective April 2, 1990 (Supp. 90-2).

ARTICLE 5. MINIMUM DESIGN CRITERIA

Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-501. Siting Requirements
To the extent practicable, a new public water system or an extension to an existing public water system shall be geographically located to avoid a site which is:

1. Subject to a significant risk from earthquakes, floods, fires, or other disasters which could cause a breakdown of the public water system or portion thereof; or
2. Within the flood plain of a 100-year flood, except for intake structures and properly protected wells.

Historical Note
Section recodified from R18-4-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-502. Minimum Design Criteria

A. A public water system shall be designed using good engineering practices. A public water system which is designed in a manner consistent with the criteria contained in Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems," issued by the Arizona Department of Health Services, May 1978 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State, shall be considered to have been designed using good engineering practices. Other system designs shall be approved if the applicant can demonstrate that the system will function properly and may be operated reliably in compliance with this Chapter. Minimum design criteria which are not subject to modification are listed in this Section.

B. A potable water distribution system shall be designed to maintain and shall maintain a pressure of at least 20 pounds per square inch at ground level at all points in the distribution system under all conditions of flow.

C. Water and sewer mains shall be separated in order to protect public water systems from possible contamination. All distances are measured perpendicularly from the outside of the sewer main to the outside of the water main. Separation requirements are as follows:

1. A water main shall not be placed:
   a. Within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided. Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided. Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area covered by this subsection (C)(1)(a).
   b. Within 2 feet horizontally and 2 feet below the sewer main.
2. No water pipe shall pass through or come into contact with any part of a sewer manhole. The minimum horizontal separation between water mains and manholes shall be 6 feet, measured from the center of the manhole.
3. The minimum separation between force mains or pressure sewers and water mains shall be 2 feet vertically and 6 feet horizontally under all conditions. Where a sewer force main crosses above or less than 6 feet below a water line, the sewer main shall be encased in at least 6 inches of concrete or constructed using mechanical joint ductile iron pipe for 10 feet on either side of the water main.
4. The separation requirements do not apply to building, plumbing, or individual house service connections.
5. Sewer mains (gravity, pressure, and force) shall be kept a minimum of 50 feet from wells unless the following conditions are met:
   a. Water main pipe, pressure tested in place to 50 psi without excessive leakage, is used for gravity sewers at distances greater than 20 feet from water wells; or
   b. Water main pipe, pressure tested in place to 150 psi without excessive leakage, is used for pressure sewers and force mains at distances greater than 20 feet from water wells. "Excessive leakage" means any amount of leakage which is greater than that permitted under the AWWA Standard applicable to the particular pipe material or valve type.
6. Requests for authorization to use alternate construction techniques, materials, and joints shall be reviewed by the Department, and such requests may be approved on a case-by-case basis.

D. A public water system shall not construct or add to its system a well which is located:

1. Within 50 feet from existing sewers unless the sewer main has been constructed in accordance with subsection (C)(5)(a) or (b) of this Section;
2. Within 100 feet of any existing septic tank or subsurface disposal system;
3. Within 100 feet of a discharge or activity which is required to obtain an Individual Aquifer Protection Permit, pursuant to A.R.S. §§ 49-241(A) through 49-251;
4. Within 100 feet of an underground storage tank as defined in A.R.S. § 49-1001; or
5. Within 100 feet of hazardous waste facilities operated by large quantity generators and treatment, storage, and disposal facilities regulated under the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 et seq.

Historical Note
Section recodified from R18-4-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-503. Storage Requirements

A. The minimum storage capacity for a CWS or a noncommunity water system that serves a residential population or a school shall be equal to the average daily demand during the peak month of the year. Storage capacity may be based on existing consumption and phased as the water system expands.

B. The minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that serves a residential population or a school may be reduced by the amount of the total daily production capacity minus the production from the largest producing well.

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.

49-202. Designation of state agency

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, adopting, modifying or repealing rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through I of this section. Subsections C, D, G and I of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through I of this section apply to the certification of applications for or notices of coverage under those permits.

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for the purposes of subsection I of this section. In all other instances, the application is complete on submission of the information requested by the department.

F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:

1. The name, address and telephone number of the applicant.

2. A description of the project to be certified, including an identification of the WOTUS in which the certified activities will occur.

3. The project location, including latitude, longitude and a legal description.

4. A United States geological service topographic map or other contour map of the project area, if available.

5. A map delineating the ordinary high watermark of WOTUS affected by the activity to be certified.

6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to WOTUS from those activities.

7. A description of the materials being discharged to or placed in WOTUS.

8. A copy of the application for a federal permit or license that is the subject of the requested certification.

I. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification. Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.

J. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:

1. There is no disposal of construction and demolition wastes and contaminated wastewater.

2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.

3. Pollution from the operation of equipment in the mining area is removed and properly disposed.

4. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. For the purposes of this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.

5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.

6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

K. For the purposes of subsection J of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.

L. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:

1. 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.

2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.

3. Corrective actions taken pursuant to the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.

M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the

department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as the director's duties are prescribed in this chapter.

N. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection M of this section.

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.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes.

B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. 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. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five

hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.

B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:

1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.

2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.

3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.

4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

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

1. Leaded joints necessary for the repair of cast iron pipes.

2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.

3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.

2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.

2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.

3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.

4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.

5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

49-361. Sewage treatment plants; operator certification

The department shall adopt and enforce rules to classify sewage collection systems and treatment plants and to certify operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, and the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The rules apply to all sewage treatment plants that receive and treat wastes from common collection sewers and industrial plants but do not apply to septic tanks, to devices that serve a single home or to industrial treatment devices that are used to perform or allow recycling or impounding wastes within the boundaries of the industry's property.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 6, Articles 1 & 3

Amend: R18-6-106, R18-6-301

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 6, Articles 1 & 3

Amend: R18-6-106, R18-6-301

Summary:

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend two (2) rules in Title 18, Chapter 6, Articles 1 and 3 regarding Pesticides and Water Pollution Control. Article 1 relates to Numeric Values and Information Submittal. Article 3 relates to the Groundwater Protection List. Specifically, this rulemaking seeks to amend R18-6-106 to reduce and consolidate the rule's procedure to align with agency practice in the application review process. Currently, the Department indicates the rule requires a registrant to submit names of third-party sources for each agricultural use pesticide active ingredient, after which the Department conducts a review and contacts each source listed to confirm they are the correct third-party source and they consent to use of their active ingredient. The Department indicates, if the third-party is not a source or is unresponsive, the Department requires the registrant to submit evidence of a business relationship. The Department indicates this process is cumbersome for a registrant and places unnecessary time delays on the application process. The Department states it would be more efficient if registrants provided proof of a business relationship up front to satisfy the registration requirements. The Department states this rule clarification requires the registrant to submit evidence of a business relationship with a

third-party source concurrently with their initial disclosures of third-party sources for their active ingredients rather than at a later date.

Additionally, the Department indicates rule R18-6-301(E) is an outdated provision that was created for the very first groundwater protection list and contains requirements for Director reevaluation of an agricultural use pesticide before the effective date of the Section, December 2005. The Department states, as the Section has since become effective, Subsection E is no longer relevant to the rule. Furthermore, the Department indicates a registrant retains the ability to add, delete, and request a reevaluation of the pesticides contained on the Groundwater Protection List through Subsections A-D of the rule. The Department states eliminating subsection E clarifies the rule, eliminates confusion, and in no way curtails the public's rights, nor increases any regulatory burden.

The Department indicates the proposed changes relate to a Five-Year Review Report for these rules which was approved by the Council in April 2021.

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

The Department indicates the changes to R18-6-106 and R18-6-301(E) do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Furthermore, the Department indicates the proposed amendment to R18-6-106 clarifies language of a rule without changing its effect and reduces or consolidates steps, procedures or processes in the rules pursuant to A.R.S. § 41-1027(A)(3) and (5) respectively. The Department indicates the proposed amendment to R18-6-301(E) amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government pursuant to A.R.S. § 41-1027(A)(6). Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A).

2. 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.

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

The Department indicates it received no public comments regarding this rulemaking.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

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

Not applicable. The Department indicates there are no corresponding federal laws.

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

Not applicable. The Department indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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

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

9. Conclusion

This expedited rulemaking from the Department seeks to amend two (2) rules in Title 18, Chapter 6, Articles 1 and 3 regarding Pesticides and Water Pollution Control. Article 1 relates to Numeric Values and Information Submittal. Article 3 relates to the Groundwater Protection List. Specifically, this rulemaking seeks to amend R18-6-106 to reduce and consolidate the rule's procedure to align with agency practice in the application review process. The Department states this rule clarification requires the registrant to submit evidence of a business relationship with a third-party source concurrently with their initial disclosures of third-party sources for their active ingredients rather than at a later date. Additionally, the Department indicates rule R18-6-301(E) is an outdated provision that is no longer relevant to the rule. The Department states eliminating subsection E clarifies the rule and eliminates confusion.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Director

July 18, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18, Environmental Quality, Chapters 5, 6, and 11 – "Groundwater Rule Clarification & Citation Clean Up"

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 September 6, 2023.

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. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)

a. The public record closed for all rules on May 22, 2023 at 5:00 p.m.
b. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. This rulemaking clarifies and cleans up the rules in Chapters 5, 6, and 11 by: amending rules made obsolete by repeal; clarifying language of a rule without changing its effect; reducing and consolidating steps, procedures or processes in the rules; and amending rules that are outdated or otherwise no longer necessary for the operation of state government. The purpose of this rulemaking is to support ADEQ's mission of protecting human health and the environment by ensuring groundwater rules are up-to-date.
c. The rulemaking activities relate to five-year review reports as follows: 18 A.A.C. Ch. 5 (August 27, 2021); 18 A.A.C. Ch. 6 (January 28, 2021); 18 A.A.C. Ch. 11 (May 31, 2021).
d. The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
e. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:
   1. This cover letter.

2. The Notice of Final Expedited Rulemakings (NFERMs) for Chapter 5, Chapter 6, and Chapter 11, including the preamble, table of contents, and text of each rule.
3. The written comments received by the Agency on the Notice of Proposed Expedited Rulemaking (NPERM) for Chapter 5 and Chapter 11. ADEQ did not receive any written comments on the NPERM for Chapter 6.
4. ADEQ did not receive an analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. There was no new material incorporated by reference in the rulemakings.
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
   a. Chapter 5:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)
      ii. Implementing statutes (specific): A.R.S. §§ 49-104(B)(11), 49-352(A), 49-353(A)(2), 49-353.01(A), and 49-361
   b. Chapter 6:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)
      ii. Implementing statutes (specific): A.R.S. § 49-303(A)-(B), § 49-305
   c. Chapter 11:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A), and A.R.S. § 49-203(A)(1)
      ii. Implementing statutes (specific): A.R.S. §§ 49-221(A), 49-223, 49-224
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

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,

Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 6. DEPARTMENT OF ENVIRONMENTAL QUALITY

PESTICIDES AND WATER POLLUTION CONTROL

ARTICLE 1. NUMERIC VALUES AND INFORMATION SUBMITTAL

ARTICLE 3. GROUNDWATER PROTECTION LIST

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R18-6-106	Amend
R18-6-301	Amend

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

Authorizing statute(s): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)

Implementing statute(s): A.R.S. § 49-303(A)-(B), § 49-305

3. The effective date of the rules:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the notice of final expedited rulemaking with the Secretary of State.

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 expedited rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 877.

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 931.

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

Name: Jon Rezabek

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

Telephone: (602) 771-8219

E-mail: rezabek.jon@azdeq.gov

Web site: www.azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027(A), to include an explanation about the rulemaking:

An expedited rulemaking is appropriate because it does not: i) increase the cost of regulatory compliance, ii) increase a fee, or iii) reduce procedural rights of persons regulated. ADEQ has authority to engage in this rulemaking in accordance with A.R.S. §§ 41-1027(A). Moreover, one or more of the additional requirements of subsection A are met, including: (A)(3) correcting typographical errors or clarifies language of a rule without changing its effect; (A)(5) reduces or consolidates steps, procedures or processes in the rules; and (A)(6) amending or repealing rules that are outdated, redundant or otherwise no longer necessary.

The following section summarizes the amendments and their justifications.

Section by Section Explanation of Rule Revisions:

R18-6-106. Informational Requirements for a Pesticide Formulator: R18-6-106 directs the procedure for informational submittals from pesticide formulator registrants who rely upon data generated by another third-party person to meet the requirements for registering an agricultural-use pesticide. However, the language of the rule creates an inefficient process that should be further clarified by ADEQ. As such, ADEQ reduces and consolidates the rule's procedure to align with agency practice in the application review process.

Currently, the rule requires a registrant to submit names of third-party sources for each agricultural use pesticide active ingredient, after which the Department conducts a review and contacts each source listed to confirm they are the correct third-party source and they consent to use of their active ingredient. If the third party is not a source or is unresponsive, the Department requires the registrant to submit evidence of a business relationship. This process is cumbersome for a registrant and places unnecessary time delays on the application process. Therefore, it would be more efficient if registrants provided proof of a business relationship up front to satisfy the registration requirements.

This rule clarification requires the registrant to submit evidence of a business relationship with a third-party source concurrently with their initial disclosures of third-party sources for their active ingredients rather than at a later date. As such, this rule does not create new obligations for registrants and is consistent with the Agency's authority in § 41-1027(A)(3) and (A)(5).

R18-6-301. Groundwater Protection List: R18-6-301(E) is an outdated provision that was created for the very first groundwater protection list and contains requirements for Director reevaluation of an agricultural use pesticide before the effective date of the Section, December 2005. As the Section has since become effective, Subsection E is no longer relevant to the rule. Furthermore, a registrant retains the ability to add, delete, and request a reevaluation of the pesticides contained on the Groundwater Protection List through Subsections A - D of the rule. Eliminating subsection E clarifies the rule, eliminates confusion, and in no way curtails the public's rights, nor increases any regulatory burden. In accordance with A.R.S. § 41-1027(A)(6), ADEQ therefore removes Subsection E in its entirety while maintaining Subsections A-D.

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

Not applicable.

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:

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

11. The Agency's summary of the public or stakeholder comments or objections made about the expedited rulemaking and the agency response to the comments:

The Agency did not receive any public comments on A.A.C. Title 18 Chapter 6.

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 statutes applicable specifically to ADEQ or this specific rulemaking.

a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:

This rule does not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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:

Not applicable.

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

Not applicable.

14. Whether the rules were previously made, amended, or repealed as emergency rules. 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:

The rules were not previously made as emergency rules.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 6. DEPARTMENT OF ENVIRONMENTAL QUALITY

ENVIRONMENTAL PESTICIDES AND WATER POLLUTION CONTROL

ARTICLE 1: NUMERIC VALUES AND INFORMATION SUBMITTAL

Section
R18-6-106. Informational Requirements for a Pesticide Formulator

ARTICLE 3. GROUNDWATER PROTECTION LIST

Section
R18-6-301. Groundwater Protection List

ARTICLE 1: NUMERIC VALUES AND INFORMATION SUBMITTAL

R18-6-106. Informational Requirements for a Pesticide Formulator

A. A pesticide formulator may rely upon the data generated by another person to meet the requirements in R18-6-102.

B. The pesticide formulator shall submit to the Department the name of every third-party person who is a source of each agricultural use pesticide active ingredient, including evidence of the formulator's business relationship with each third party by way of:

1. A signed contract; or
2. Any other documentation of a business arrangement, endorsed by each party.

~~B. The Department shall request that each person identified under subsection (A) verify within 30 days, in writing, whether the person provides the pesticide formulator with the active ingredient in question.~~

~~C. If a person advises the Department that the person is not a source for the active ingredient used by the pesticide formulator or if the person does not respond under subsection (B), the Department shall notify the pesticide formulator of that fact and shall require the pesticide formulator to provide either of the following documents attesting to a business relationship involving the active ingredient in question:~~

~~1. A signed contract, or~~

~~2. Any other documentation of a business arrangement, endorsed by each party.~~

C. If the pesticide formulator does not produce acceptable documentation of a business relationship under subsection (B) or if a person identified by the pesticide formulator is not a data generator for the active ingredient in question, the Director shall find that a groundwater protection data gap exists for the agricultural use pesticide, and the formulator is subject to the provisions in A.R.S. § 49-304.

D. Any pesticide formulator who relies on data submitted by a person identified as a source under subsection (B) shall notify the Department of any change in the source within 60 days of a similar notification to the EPA.

ARTICLE 3. GROUNDWATER PROTECTION LIST

R18-6-301. Groundwater Protection List

A. Groundwater Protection List. The Director shall, using an evaluation process specified in R18-6-103 and the addition and deletion criteria specified in subsections (B) and (C), annually develop and maintain a list of agricultural use pesticides that have the potential to pollute groundwater.

1. The Department shall publish the proposed Groundwater Protection List in the Arizona Administrative Register and accept written comments from the public.

2. The written public comment period begins on the publication date of the list and extends for 30 calendar days.

3. The Department shall publish the final Groundwater Protection List each year in the Arizona Administrative Register on or before July 1. The list is effective on December 1 of the publication year.

B. Adding an agricultural use pesticide. The Director shall add an agricultural use pesticide to the Groundwater Protection

List for any of the following reasons:

1. An agricultural use pesticide active ingredient is identified under R18-6-103 as having the potential to pollute groundwater;

2. An agricultural use pesticide active ingredient is detected in Arizona consistent with the testing requirements of R18-6-104 and is found:

a. At or below the deepest of the following depths:

i. Eight feet below the soil surface, or

ii. Below the root zone of the crop where the active ingredient was found;

b. In the groundwater of this state;

3. An agricultural use pesticide degradation product or other specified ingredient that poses a threat to public health has been found under the conditions described in subsection (B)(2).

C. Deleting an agricultural use pesticide. The Director shall delete an agricultural use pesticide from the Groundwater Protection List under any of the following circumstances:

1. The results of monitoring and testing conducted by the Department, a government agency, or other reliable source establish that the active ingredient has not been detected in Arizona under the conditions described in subsection (B)(2).

2. The Director no longer considers the agricultural use pesticide to have the potential to pollute groundwater in Arizona based on:

a. A change in a specific numeric value established in R18-6-103(1),

b. A revision in the specific numeric values established by new research studies or new procedures, or

c. The results of the evaluation under R18-6-103(2).

3. Agricultural use pesticide registration cancellation. The Arizona Department of Agriculture no longer registers the agricultural use pesticide under A.R.S. § 3-351(I).

D. Pesticide review. Any person may request that the Director add or delete an agricultural use pesticide from the Groundwater Protection List by submitting an explanation of the request to the Department with studies and conclusions of support.

1. The Director shall notify the registrant in writing after receiving a request to add or delete an agricultural use pesticide from the Groundwater Protection List and again upon making the determination.

2. The Director shall consider whether the supporting documentation:

a. Is based upon procedures consistent with those described in R18-6-104 and A.R.S. Title 49, Chapter 2, Article 6; and

b. Justifies the addition or deletion of the agricultural use pesticide from the Groundwater Protection List.

3. Director determination.

a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the Director shall add the pesticide to, or retain the pesticide on, the Groundwater Protection List.

b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall, if the pesticide is on the Groundwater Protection List, delete it from the list.

~~E. Reevaluation of an agricultural use pesticide. A registrant may request that the Director reevaluate whether an agricultural use pesticide placed on the Groundwater Protection List before [effective date of this Section] that has the potential to pollute groundwater in Arizona. The registrant shall submit the written request before December 1, 2005 and include the assessment and supporting documentation specified in R18-6-102(C).~~

~~1. The Director shall not accept a request to reevaluate an agricultural use pesticide if:~~

~~a. An active ingredient has been detected in Arizona using the testing criteria in R18-6-104 and is found under conditions described in subsection (B)(2); or~~

~~b. An agricultural use pesticide degradation product or other specified ingredient relating to the agricultural use pesticide has been detected in Arizona consistent with the criteria in R18-6-104 and the agricultural use pesticide degradation product or other specified ingredient poses a threat to public health and has been found under the conditions described in subsection (B)(2);~~

~~2. Director determination.~~

~~a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the pesticide shall remain on the Groundwater Protection List.~~

~~b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall delete the pesticide from the Groundwater Protection List.~~

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 6. DEPARTMENT OF ENVIRONMENTAL QUALITY
PESTICIDES AND WATER POLLUTION CONTROL**

ARTICLE 1. NUMERIC VALUES AND INFORMATION SUBMITTAL

Article 1 consisting of Sections R18-6-101 through R18-6-105 adopted effective May 10, 1988.

Section

ARTICLE 2. PESTICIDE CONTAMINATION PREVENTION

Article 2 consisting of Section R18-6-201 repealed effective September 23, 1992 (Supp. 92-3).

Article 2 consisting of Section R18-6-201 adopted effective August 27, 1987.

Section

ARTICLE 3. GROUNDWATER PROTECTION LIST

Article 3 consisting of Section R18-6-302 adopted effective May 10, 1988.

Section

ARTICLE 1. NUMERIC VALUES AND INFORMATION SUBMITTAL

R18-6-101. Definitions

In addition to the definitions established in A.R.S. § 49-301, the following terms apply to this Chapter:

1. "Agricultural use pesticide" means any pesticide intended for use directly on a crop. An agricultural use pesticide does not include animal pesticide eartags or pesticides intended solely for use within and around a confined structure.
2. "Crop" means any plant, animal, plant product, or animal product produced for commercial or research purposes.
3. "Data generator" means any person providing information to support the registration in this state of an agricultural use pesticide in accordance with A.R.S. § 49-302(A).
4. "EPA" means the United States Environmental Protection Agency.
5. "Formulator" means any person who purchases an EPA-registered pesticide to reformulate or repackage and register the pesticide for sale in this state.
6. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide container, and the outside container or wrapper of the retail package, if any, of the pesticide.
7. "Pest" means any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria, or other pathogenic organism, or any other form of terrestrial or aquatic plant or animal life, except virus, bacteria, or other microorganism on or in living humans or other living animals, that is declared a pest by the Director of the Arizona Department of Agriculture.
8. "Soil-applied" means an agricultural use pesticide intended for application to or injection into the soil by ground-based application equipment or chemigation, or the label of the pesticide requires or recommends that the application is followed within 72 hours by flood or furrow irrigation.

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-102. Agricultural Use Pesticide Submittal Requirements

A. Pre-registration data requirements for new agricultural use pesticides.

1. Before registering a new agricultural use pesticide under A.R.S. § 3-351, an applicant shall submit information that enables the Department to determine whether the new agricultural use pesticide has the potential to pollute groundwater in the state. This information shall include:
   a. A transmittal letter;
   b. The following information on a Data Summary form obtained from the Department:
      i. The company name and address;
      ii. The name and contact information of the person making the submittal;
      iii. The date of filing;
      iv. The product information, including the brand name, EPA registration number, formulation category, and intended use; and
      v. The active ingredient technical name, Chemical Abstract Service (CAS) number, common name, molecular weight, and bulk density; and
   c. The following information for each active ingredient:
      i. Water solubility;
      ii. Vapor pressure;
      iii. Octanol-water partition coefficient;
      iv. Soil adsorption coefficient;
      v. Henry's law constant;
      vi. Dissipation studies, including hydrolysis, photolysis, aerobic and anaerobic soil metabolism, and field dissipation, performed under conditions in Arizona, or similar environmental and use conditions, if that information exists in studies and conclusions from other states or the United States government. The studies shall, at a minimum, meet EPA testing methods and reporting guidelines.
2. The applicant may submit the following alternate information:
   a. Upon Director approval, alternate information to satisfy one or more of the data requirements in subsection (A)(1)(c). The alternate information shall

accurately describe the relevant data required for each new agricultural use pesticide active ingredient under conditions in Arizona or under similar environmental and use conditions;

b. California registration.

i. Evidence that the California Department of Food and Agriculture registered the agricultural use pesticide following the data requirements under California Food and Agricultural Code Section 13143; and

ii. Documentation showing that required studies were performed under environmental and use conditions that are similar to those conditions in Arizona.

3. Waiver. The Director may waive some or all of the information required in subsection (A)(1)(c) if the applicant demonstrates that:

a. Due to the nature of the active ingredient, it is not scientifically possible to obtain meaningful results for the specified tests; or

b. Due to the application or cultural practices for the active ingredient, it is not necessary to obtain some or all of the information.

B. Pre-registration data submittal completeness.

1. The Department shall notify the Arizona Department of Agriculture when the applicant submits all the information on the active ingredient required under subsection (A) and the Director has concluded that the information is sufficient to determine whether the active ingredient has the potential to pollute groundwater of the state.

2. If the Director cannot determine that the data submittal requirements for agricultural use registration in Arizona have been met, the person may apply for a conditional registration under A.R.S. § 49-310.

C. Information submittal for the product chemistry and environmental fate assessment evaluation. After satisfying the data submittal required in subsection (A) and registering the pesticide with the Arizona Department of Agriculture:

1. A registrant may prepare an assessment of the product chemistry and environmental fate parameters for the Department to evaluate the potential for a new agricultural use pesticide to pollute groundwater. The assessment shall include:

a. Patterns for using the agricultural use pesticide in Arizona;

b. Cultural practices for those areas within Arizona where the agricultural use pesticide is intended for use;

c. Geological and meteorological conditions of the regions within Arizona where the agricultural use pesticide is intended for use; and

d. Any other information the Director determines is necessary to support the assessment.

2. A registrant may submit any of the following information if it is directly relevant to the agricultural use pesticide active ingredient evaluation:

a. Relevant scientific data and summaries, including those submitted to or required by federal and state agencies that further support the studies required in R18-6-102(A)(1)(c);

b. Relevant evaluations and conclusions by federal and state agencies, including evaluations of the studies required in R18-6-102(A)(1)(c);

c. Documentation that addresses whether the studies required in R18-6-102(A)(1)(c) were performed under environmental and use conditions that are similar to those in Arizona.

D. If new information is available about the active ingredient of an agricultural use pesticide currently registered by the Arizona Department of Agriculture, the Director may require the registrant to submit the new information to the Director to assess whether the information is relevant to the Director's determination under subsection (B)(1).

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-103. Agricultural Use Active Ingredient Evaluation

For each new or existing agricultural use pesticide registered in Arizona, the Director shall determine whether each active ingredient has the potential to pollute groundwater in the state. The Director shall either:

1. Base the evaluation on the information submitted in accordance with R18-6-102(A) to determine whether the active ingredient fails any of the following mobility factors and one or more of the following persistence factors; or

SPECIFIC NUMERIC VALUES

MOBILITY FACTORS	PERSISTENCE FACTORS
Water solubility	No greater than 30 ppm
Soil adsorption coefficient	K_d no less than 5
Hydrolysis	Half-life no greater than 25 weeks
Aerobic soil metabolism	Half-life no greater than 3 weeks
Anaerobic soil metabolism	Half-life no greater than 3 weeks
Field dissipation	Half-life no greater than 3 weeks

2. Base the evaluation on the product chemistry and environmental fate assessment submitted in accordance with R18-6-102(C).

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-104. Monitoring and Testing

A. The Director shall conduct soil and groundwater monitoring for active ingredients contained in agricultural use pesticides placed upon the Groundwater Protection List as required under A.R.S. § 49-307(A). The Department may conduct soil and groundwater monitoring for other specified ingredients or degradation products based on active ingredient test results or other information about the pesticide.

B. The Director shall use the results of soil and groundwater monitoring and testing after considering the factors in A.R.S. §§ 49-307(C) to make the determination in 49-308(A) and 49-309(A), (B), or (D).

C. If the Director determines that an agricultural use pesticide meets the criteria or conditions specified in A.R.S. § 49-308(A), the Director shall notify the registrant in writing.

Historical Note
Adopted effective May 10, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-105. Repealed

Historical Note
Adopted effective May 10, 1988 (Supp. 88-2). Section repealed by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-106. Informational Requirements for a Pesticide Formulator

A. A pesticide formulator may rely upon the data generated by another person to meet the requirements in R18-6-102. The pesticide formulator shall submit, to the Department, the name of every person who is a source of each agricultural use pesticide active ingredient.

B. The Department shall request that each person identified under subsection (A) verify within 30 days, in writing, whether the person provides the pesticide formulator with the active ingredient in question.

C. If a person advises the Department that the person is not a source for the active ingredient used by the pesticide formulator or if the person does not respond under subsection (B), the Department shall notify the pesticide formulator of that fact and shall require the pesticide formulator to provide either of the following documents attesting to a business relationship involving the active ingredient in question:
1. A signed contract, or
2. Any other documentation of a business arrangement, endorsed by each party.

D. If the pesticide formulator does not produce acceptable documentation of a business relationship under subsection (C) or if a person identified by the pesticide formulator is not a data generator for the active ingredient in question, the Director shall find that a groundwater protection data gap exists for the agricultural use pesticide, and the formulator is subject to the provisions in A.R.S. § 49-304.

E. Any pesticide formulator who relies on data submitted by a person identified as a source under subsection (A) shall notify the Department of any change in the source within 60 days of a similar notification to the EPA.

Historical Note
Adopted effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

ARTICLE 2. PESTICIDE CONTAMINATION PREVENTION

R18-6-201. Repealed

Historical Note
Adopted effective August 27, 1987 (Supp. 87-3). Repealed effective September 23, 1992 (Supp. 92-3).

ARTICLE 3. GROUNDWATER PROTECTION LIST

R18-6-301. Groundwater Protection List

A. Groundwater Protection List. The Director shall, using an evaluation process specified in R18-6-103 and the addition and deletion criteria specified in subsections (B) and (C), annually develop and maintain a list of agricultural use pesticides that have the potential to pollute groundwater.
1. The Department shall publish the proposed Groundwater Protection List in the *Arizona Administrative Register* and accept written comments from the public.
2. The written public comment period begins on the publication date of the list and extends for 30 calendar days.
3. The Department shall publish the final Groundwater Protection List each year in the *Arizona Administrative Register* on or before July 1. The list is effective on December 1 of the publication year.

B. Adding an agricultural use pesticide. The Director shall add an agricultural use pesticide to the Groundwater Protection List for any of the following reasons:
1. An agricultural use pesticide active ingredient is identified under R18-6-103 as having the potential to pollute groundwater;
2. An agricultural use pesticide active ingredient is detected in Arizona consistent with the testing requirements of R18-6-104 and is found:
   a. At or below the deepest of the following depths:
      i. Eight feet below the soil surface, or
      ii. Below the root zone of the crop where the active ingredient was found;
   b. In the groundwater of this state;
3. An agricultural use pesticide degradation product or other specified ingredient that poses a threat to public health has been found under the conditions described in subsection (B)(2).

C. Deleting an agricultural use pesticide. The Director shall delete an agricultural use pesticide from the Groundwater Protection List under any of the following circumstances:
1. The results of monitoring and testing conducted by the Department, a government agency, or other reliable source establish that the active ingredient has not been detected in Arizona under the conditions described in subsection (B)(2).
2. The Director no longer considers the agricultural use pesticide to have the potential to pollute groundwater in Arizona based on:
   a. A change in a specific numeric value established in R18-6-103(1),
   b. A revision in the specific numeric values established by new research studies or new procedures, or
   c. The results of the evaluation under R18-6-103(2).
3. Agricultural use pesticide registration cancellation. The Arizona Department of Agriculture no longer registers the agricultural use pesticide under A.R.S. § 3-351(I).

D. Pesticide review. Any person may request that the Director add or delete an agricultural use pesticide from the Groundwater Protection List by submitting an explanation of the request to the Department with studies and conclusions of support.
1. The Director shall notify the registrant in writing after receiving a request to add or delete an agricultural use pesticide from the Groundwater Protection List and again upon making the determination.
2. The Director shall consider whether the supporting documentation:
   a. Is based upon procedures consistent with those described in R18-6-104 and A.R.S. Title 49, Chapter 2, Article 6; and
   b. Justifies the addition or deletion of the agricultural use pesticide from the Groundwater Protection List.
3. Director determination.
   a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the Director shall add the pesticide to, or retain the pesticide on, the Groundwater Protection List.

b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall, if the pesticide is on the Groundwater Protection List, delete it from the list.

E. Reevaluation of an agricultural use pesticide. A registrant may request that the Director reevaluate whether an agricultural use pesticide placed on the Groundwater Protection List before [effective date of this Section] that has the potential to pollute groundwater in Arizona. The registrant shall submit the written request before December 1, 2005 and include the assessment and supporting documentation specified in R18-6-102(C).

1. The Director shall not accept a request to reevaluate an agricultural use pesticide if:
   a. An active ingredient has been detected in Arizona using the testing criteria in R18-6-104 and is found under conditions described in subsection (B)(2); or
   b. An agricultural use pesticide degradation product or other specified ingredient relating to the agricultural use pesticide has been detected in Arizona consistent with the criteria in R18-6-104 and the agricultural use pesticide degradation product or other specified ingredient poses a threat to public health and has been found under the conditions described in subsection (B)(2);
2. Director determination.
   a. If the Director determines that the agricultural use pesticide has the potential to pollute groundwater, the pesticide shall remain on the Groundwater Protection List.
   b. If the Director determines that the agricultural use pesticide does not have the potential to pollute groundwater, the Director shall delete the pesticide from the Groundwater Protection List.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-302. Findings and Determinations

A. If the Director discovers or becomes aware of the illegal sale or use of any agricultural use pesticide on the Groundwater Protection List, the Director shall report the sale or use to the appropriate regulatory agency and to the Office of the Attorney General.

B. If the Director finds that an active ingredient, degradation product, or other specified ingredient of an agricultural use pesticide has been detected under the conditions specified in R18-6-104, the Director shall refer these findings to the state or federal agency responsible for further investigation and enforcement.

C. If the Director discovers a site that demonstrates pesticide contamination, the Director shall determine whether remedial action is required under A.R.S. Title 49, Chapter 2, Article 5.

Historical Note

Adopted effective May 10, 1988 (Supp. 88-2). Amended effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

R18-6-303. Requirements for an Agricultural Use Pesticide on the Groundwater Protection List

A. Any person who causes another person to soil-apply an agricultural use pesticide on the Groundwater Protection List shall implement Best Management Practices to reduce or prevent the pollution of groundwater. In implementing the Best Management Practices, the person shall consider the following factors:

1. Application site characteristics, including soil texture, slope, organic matter, and depth to groundwater to determine site susceptibility. The person shall consider:
   a. Selecting a pesticide based on the intended application site characteristics;
   b. Minimizing or avoiding the use of any pesticide with high leaching or high runoff potential;
   c. Incorporating erosion control practices to minimize runoff; and
   d. Using an alternative pest control method, if practical.
2. Protection of water resources from potential contamination during mixing, loading, or application. The person shall consider:
   a. Applying the correct amount of pesticide according to the label and employ methods that avoid overspray or drift;
   b. Weather patterns, soil moisture, and crop needs before pesticide application; and
   c. Maintaining buffer zones, where applicable.

B. The Director shall annually obtain the following information from the Arizona Department of Agriculture for each agricultural use pesticide on the Groundwater Protection List that is soil-applied:

1. The pest condition that the agricultural use pesticide will control;
2. The name of the crop and number of acres to which the agricultural use pesticide has been applied;
3. The location of use including the county, township, range, and section;
4. The name of the product used, including the EPA registration number; and
5. The amount of agricultural use pesticide applied per acre.

Historical Note

Adopted effective September 23, 1992 (Supp. 92-3). Amended by final rulemaking at 11 A.A.R. 3949, effective November 22, 2005 (Supp. 05-3).

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.

49-202. Designation of state agency

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, adopting, modifying or repealing rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through I of this section. Subsections C, D, G and I of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through I of this section apply to the certification of applications for or notices of coverage under those permits.

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for the purposes of subsection I of this section. In all other instances, the application is complete on submission of the information requested by the department.

F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:

1. The name, address and telephone number of the applicant.

2. A description of the project to be certified, including an identification of the WOTUS in which the certified activities will occur.

3. The project location, including latitude, longitude and a legal description.

4. A United States geological service topographic map or other contour map of the project area, if available.

5. A map delineating the ordinary high watermark of WOTUS affected by the activity to be certified.

6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to WOTUS from those activities.

7. A description of the materials being discharged to or placed in WOTUS.

8. A copy of the application for a federal permit or license that is the subject of the requested certification.

I. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification. Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.

J. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:

1. There is no disposal of construction and demolition wastes and contaminated wastewater.

2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.

3. Pollution from the operation of equipment in the mining area is removed and properly disposed.

4. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. For the purposes of this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.

5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.

6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

K. For the purposes of subsection J of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.

L. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:

1. 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.

2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.

3. Corrective actions taken pursuant to the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.

M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the

department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as the director's duties are prescribed in this chapter.

N. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection M of this section.

49-303. Pesticide evaluation process; reporting requirements

A. After satisfying the requirements of section 49-302, a registrant may use any of the following processes to demonstrate to the director whether the pesticide has the potential to pollute groundwater:

1. The use of specific numeric values established by the director for pesticides regarding water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism and field dissipation. The director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources may revise the numeric values if the director of environmental quality finds that the revision is necessary to protect the groundwater of this state. The numeric values shall be at least as stringent as the values used by the United States environmental protection agency at the time the values are established or revised.

2. If adopted in rule, use of a procedure for establishing specific numeric values other than those established pursuant to paragraph 1 of this subsection. Any numeric values adopted by the director of environmental quality pursuant to this paragraph shall be at least as stringent as the numeric values used by the United States environmental protection agency.

3. If adopted in rule, use of an alternate procedure other than the use of specific numeric values to evaluate the potential of a pesticide to pollute groundwater. This procedure shall be consistent with the objective of this article.

B. In consultation with the Arizona department of agriculture and the department of water resources, the director of environmental quality shall adopt rules necessary to implement this section.

C. The director shall report on December 1 of each year the following information to the legislature for each pesticide registered for agricultural use:

1. A list of each active ingredient, other specified ingredient or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

2. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient which is greater than one or more of the numeric values established pursuant to subsection A of this section, or is less than the numeric value in the case of soil adsorption coefficient, in both of the following categories:

(a) Water solubility or soil adsorption coefficient.

(b) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism or field dissipation.

3. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient that has been determined by an alternate procedure that is adopted pursuant to subsection B of this section to have the potential to pollute groundwater.

4. For each pesticide listed pursuant to paragraph 2 or 3 of this subsection for which information is available, a list of the amount of the pesticide that was applied to soil in this state during the most recent year, where it was applied and for what purpose the pesticide was used.

D. The director of environmental quality in consultation with the Arizona department of agriculture, the department of water resources and the department of health services may determine to the extent possible the toxicological significance of the degradation products and other specified ingredients identified pursuant to subsection C, paragraphs 2 and 3 of this section.

49-305. Groundwater protection list; regulation of pesticides on list

A. The director shall establish a groundwater protection list of pesticides that have the potential to pollute groundwater. The director shall immediately place all pesticides identified in section 49-303, subsection C, paragraphs 2 and 3 on the groundwater protection list and shall regulate the use of these pesticides if the pesticide is intended for application to or injection into the soil by ground based application equipment or by chemigation, or the label of the pesticide requires or recommends that the application be followed within seventy-two hours by flood or furrow irrigation. The director shall adopt rules to carry out this section.

B. On notice from the director, a person who uses a pesticide on the groundwater protection list is required to report the use of the pesticide on a form prescribed by the director. The reporting deadline shall conform to the deadline established by the Arizona department of agriculture for reporting custom applications.

C. If a pesticide has not been detected in groundwater anywhere in this state in tests conducted by a governmental agency or other reliable source, the director may remove that pesticide from the groundwater protection list as provided in rule.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 11, Articles 4 & 5

Amend: R18-11-403, R18-11-407, R18-11-502, R18-11-504, R18-11-506

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 11, Articles 4 & 5

Amend: R18-11-403, R18-11-407, R18-11-502, R18-11-504, R18-11-506

Summary:

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend five (5) rules in Title 18, Chapter 11, Articles 4 and 5 regarding Aquifer Water Quality Standards and Aquifer Boundary & Protected Use Classification, respectively. Specifically this rulemaking seeks to update incorrect rule and statutory references throughout the rules as outlined in more detail in Section 6 of the Department's Preamble. Additionally, the Department seeks to amend the language in R18-11-502(A) and (B) to comply with the incorporation by reference requirements of A.R.S. § 41-1028 to state that the rule does not include later amendments or editions of the incorporated matter, and that copies of the documents are on file with the Department and made available to the public.

The Department indicates the proposed changes relate to a Five-Year Review Report for these rules which was approved by the Council in November 2020.

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

To qualify for expedited rulemaking, the rulemaking must not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and meet one or more criteria listed in A.R.S. § 41-1027(A). The Department indicates the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Additionally, the Department states addressing incorrect rule and statutory citations and adding correct statutorily required language for incorporation by reference amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority pursuant to A.R.S. § 41-1027(A)(1), corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect pursuant to A.R.S. § 41-1027(A)(3), and amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government pursuant to A.R.S. § 41-1027(A)(6). Council staff believes the Department has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)

2. 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.

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

The Department indicates it received one comment regarding this rulemaking, specifically asking for clarification on the Department's rulemaking action generally, including what the Department proposes and for what reason. The Department indicates, in addition to outlining the proposed rule changes contained in the Notice of Proposed Expedited Rulemaking for these rules, the Department indicates it clarified the reasoning behind the action. Specifically, the Department indicated the rulemaking arose from the Department previous 5YRR for these rules as outlined above. A copy of the written comment has 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.

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

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking published in the Administrative Register and the Notice of Final Expedited Rulemaking now before the Council.

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

Not applicable. The Department indicates there are no corresponding federal laws.

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

Not applicable. The Department indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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

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

9. Conclusion

This expedited rulemaking from the Department seeks to amend five (5) rules in Title 18, Chapter 11, Articles 4 and 5 regarding Aquifer Water Quality Standards and Aquifer Boundary & Protected Use Classification, respectively. Specifically this rulemaking seeks to update incorrect rule and statutory references throughout the rules. Additionally, the Department seeks to amend the language in R18-11-502(A) and (B) to comply with the incorporation by reference requirements of A.R.S. § 41-1028 to state that the rule does not include later amendments or editions of the incorporated matter, and that copies of the documents are on file with the Department and made available to the public.

Pursuant to A.R.S. § 41-1027(H), an expedited rulemaking becomes effective immediately on the filing of the approved Notice of Final Expedited Rulemaking with the Secretary of State.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Director

July 18, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18, Environmental Quality, Chapters 5, 6, and 11 – "Groundwater Rule Clarification & Citation Clean Up"

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 September 6, 2023.

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. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)

a. The public record closed for all rules on May 22, 2023 at 5:00 p.m.
b. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. This rulemaking clarifies and cleans up the rules in Chapters 5, 6, and 11 by: amending rules made obsolete by repeal; clarifying language of a rule without changing its effect; reducing and consolidating steps, procedures or processes in the rules; and amending rules that are outdated or otherwise no longer necessary for the operation of state government. The purpose of this rulemaking is to support ADEQ's mission of protecting human health and the environment by ensuring groundwater rules are up-to-date.
c. The rulemaking activities relate to five-year review reports as follows: 18 A.A.C. Ch. 5 (August 27, 2021); 18 A.A.C. Ch. 6 (January 28, 2021); 18 A.A.C. Ch. 11 (May 31, 2021).
d. The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
e. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:
   1. This cover letter.

2. The Notice of Final Expedited Rulemakings (NFERMs) for Chapter 5, Chapter 6, and Chapter 11, including the preamble, table of contents, and text of each rule.
3. The written comments received by the Agency on the Notice of Proposed Expedited Rulemaking (NPERM) for Chapter 5 and Chapter 11. ADEQ did not receive any written comments on the NPERM for Chapter 6.
4. ADEQ did not receive an analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. There was no new material incorporated by reference in the rulemakings.
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
   a. Chapter 5:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)
      ii. Implementing statutes (specific): A.R.S. §§ 49-104(B)(11), 49-352(A), 49-353(A)(2), 49-353.01(A), and 49-361
   b. Chapter 6:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A)
      ii. Implementing statutes (specific): A.R.S. § 49-303(A)-(B), § 49-305
   c. Chapter 11:
      i. Authorizing statutes (general): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A), and A.R.S. § 49-203(A)(1)
      ii. Implementing statutes (specific): A.R.S. §§ 49-221(A), 49-223, 49-224
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

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,

Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY STANDARDS

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

ARTICLE 5. AQUIFER BOUNDARY & PROTECTED USE CLASSIFICATION

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R18-11-403	Amend
R18-11-407	Amend
R18-11-502	Amend
R18-11-504	Amend
R18-11-506	Amend

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

Authorizing statute(s): A.R.S. § 49-104(A)(1) and (A)(10), A.R.S. § 49-202(A), and A.R.S. § 49-203(A)(1)

Implementing statute(s): A.R.S. §§ 49-221(A), 49-223, 49-224

3. The effective date of the rules:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the notice of final expedited rulemaking with the Secretary of State.

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 expedited rulemaking package:

Notice of Rulemaking Docket Opening: 29 A.A.R. 878.

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 934.

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

Name: Jon Rezabek

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

Telephone: (602) 771-8219

E-mail: rezabek.jon@azdeq.gov

Web site: www.azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027(A), to include an explanation about the rulemaking:

An expedited rulemaking is appropriate because it does not: i) increase the cost of regulatory compliance, ii) increase a fee, or iii) reduce procedural rights of persons regulated. ADEQ has authority to engage in this rulemaking in accordance with A.R.S. §§ 41-1027(A). Moreover, one or more of the additional requirements of subsection A are met, including: (A)(1) amending a rule made obsolete by repeal; (A)(3) correcting typographical

errors or clarifies language of a rule without changing its effect; and (A)(6) amending or repealing rules that are outdated, redundant or otherwise no longer necessary.

The following section summarizes the amendments and their justifications.

Section by Section Explanation of Rule Revisions:

R18-11-403. Analytical Methods: The rule contains an incorrect reference to R9-14-607(B) (license application fees) and would be more effective if it gave the correct reference to the rule for seeking approval on an alternative analytical method, R9-14-610(C). Therefore, in accordance with A.R.S. § 41-1027(A)(6), ADEQ updates the language in the rule to reflect the correct reference.

R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers: The reference to A.R.S. § 49-223(D) in R18-11-407(C) is incorrect. A.R.S. § 49-223(D) now sets forth sampling and analytical protocols for assessing compliance with the aquifer water quality standards. R18-11-407(C) would be more effective if it gave the correct reference to the rule for the Director's obligation to adopt water quality standards for reclassified aquifers, A.R.S. § 49-223(E). Therefore, in accordance with A.R.S. § 41-1027(A)(6), ADEQ updates the language in the rule to reflect the correct reference.

R18-11-502. Aquifer Boundaries: R18-11-502(A) and (B) improperly incorporate documents by reference, and should instead adhere to the requirements of incorporation by reference at A.R.S. § 41-1028(A) by including required language stating that there are no later amendments or editions of the incorporated matter, and that copies of the document are on file with ADEQ and made available to the public. Therefore, in accordance with A.R.S. § 41-1027(A)(3), ADEQ updates the language of those rules to reflect the correct statutory requirements of incorporations by reference.

R18-11-504. Agency Action on Petition: R18-11-504(B) contains an incorrect reference to A.R.S. § 49-204, which, at the time the rules were written, established a Water Quality Advisory Council (WQAC). The Council was terminated in 1999 and the corresponding statute was subsequently repealed in 2000. The current A.R.S. § 49-204 discusses gray water reuse and is not relevant to the rule. Therefore, in accordance with its authority under A.R.S. § 41-1027(A)(1), ADEQ removes the reference to A.R.S. § 49-204 within the rule.

R18-11-506. Rescission of Reclassification: R18-11-506 contains an incorrect reference to A.R.S. § 49-204, which, at the time the rules were written, established a Water Quality Advisory Council (WQAC). The Council was terminated in 1999 and the corresponding statute was subsequently repealed in 2000. The current A.R.S. § 49-204 discusses gray water reuse and is not relevant to the rule. Therefore, in accordance with its authority under A.R.S. § 41-1027(A)(1), ADEQ removes the reference to A.R.S. § 49-204 within the rule.

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

Not applicable.

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:

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

11. The Agency's summary of the public or stakeholder comments or objections made about the expedited rulemaking and the agency response to the comments:

The Agency received one comment related to A.A.C. Title 18, Chapter 11, Articles 4 and 5.

Comment: After the Notice of Docket Opening was published in the Arizona Administrative Register on April 14, 2023, in anticipation of the Notice of Proposed Expedited Rulemaking, the commenter asked for clarification on ADEQ's action including what ADEQ proposes and for what reason.

Agency Response: In addition to outlining the proposed rule changes contained in the Notice of Proposed Expedited Rulemaking for A.A.C. Title 18, Chapter 11, Articles 4 and 5, the Agency clarified the reasoning behind the action. The Notice of Proposed Expedited Rulemaking arose from the Agency's previous Five-Year Rule Review of groundwater rules conducted pursuant to ARS 41-1056(A). The Governor's Regulatory Review Council reviewed and approved the Five-Year Rule Review reports. The proposed rulemaking represents the Agency's fulfillment of promises made in the reports that were determined to fit within the scope of an expedited rulemaking under A.R.S. § 41-1027(A).

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 statutes applicable specifically to ADEQ or this specific rulemaking.

a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:

This rule does not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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:

Not applicable.

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

Not applicable.

14. Whether the rules were previously made, amended, or repealed as emergency rules. 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:

The rules were not previously made as emergency rules.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY STANDARDS

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

Section
R18-11-403. Analytical Methods
R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

Section
R18-11-502. Aquifer ~~b~~Boundaries
R18-11-504. Agency ~~a~~Action on ~~p~~Petition
R18-11-506. Rescission of ~~r~~Reclassification

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

R18-11-403. Analytical Methods

Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. ~~R9-14-607(B)~~ R9-14-610(C).

R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers

A. All aquifers in the state are classified for drinking water protected use except for aquifers which are reclassified to a non-drinking water protected use pursuant to A.R.S. § 49-224 and A.A.C. R18-11-503.

B. Aquifer water quality standards for drinking water protected use apply to reclassified aquifers except where expressly superseded by aquifer water quality standards adopted pursuant to subsection (C) of this Section.

C. The Director shall adopt, by rule, aquifer water quality standards for reclassified aquifers within one year of the date of the order reclassifying the aquifer to a nondrinking water protected use. The Director shall adopt aquifer water quality standards for reclassified aquifers only for pollutants that are specifically identified in a petition for reclassification as prescribed by A.R.S. § 49-223~~(D)~~(E) and A.A.C. R18-11-503(B). Aquifer water quality standards for reclassified aquifers shall be sufficient to protect the use of the reclassified aquifer.

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

R18-11-502. Aquifer bBoundaries

A. Except as provided in subsection (B) of this rule, aquifer boundaries for the aquifers in this state are identified and defined as being identical to the hydrologic basin and subbasin boundaries, as found by the Director of the Department of Water Resources, Findings and Order In the Matter of The Designation of Groundwater Basins and Subbasins In The State of

Arizona (dated June 21, 1984), pursuant to A.R.S. §§ 45-403 and 45-404, which is incorporated herein by reference, ~~and~~ on file and available for public inspection ~~with~~ at the Department of Environmental Quality ~~and the Office of the Secretary of State~~. No later amendments or editions are incorporated by reference.

B. Excluded from the boundaries of the aquifers are hard rock areas which contain little or no water, as identified in Plate 1 of the Department of Water Resources, Water Resource Hydrologic Map Series Report Number 2 (dated January 1981) and as further identified in the Bureau of Mines, University of Arizona County Geologic Map Series (individual county maps dated 1957 through 1960), which are incorporated herein by reference, ~~and~~ on file and available for public inspection ~~with~~ at the Department of Environmental Quality ~~and the Office of the Secretary of State~~. No later amendments or editions are incorporated by reference.

C. The Director may, by rule, modify or add an aquifer boundary provided that one or more of the following applies:

1. The Department of Water Resources modifies the boundaries of its basins or subbasins.

2. The Director is made aware of new technical information or data which supports refinement of an aquifer boundary.

D. Facilities located outside of the boundaries defined in these rules shall be subject to A.R.S. § 49-241 except as provided therein.

R18-11-504. Agency aAction on pPetition

A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.

B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) ~~and 49-204~~, the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

R18-11-506. Rescission of rReclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) ~~and 49-204~~.

5. Specific water quality requirements for the intended type of direct reuse;
6. The means of application of the reclaimed water;
7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
8. The potential for improper or unintended use of the reclaimed water;
9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

Historical Note
New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A
Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

Historical Note
New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

ARTICLE 4. AQUIFER WATER QUALITY STANDARDS

R18-11-401. Definitions
In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. "Beta particle and photon radioactivity from man-made radionuclides" means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
4. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
5. "Mg/l" means milligrams per liter.
6. "Millirem" means 1/1000 of a rem. A rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.
7. "Non-drinking water protected use" means the protection and maintenance of aquifer water quality for a use other than for human consumption.
8. "pCi" means picocurie, or the quantity of radioactive material producing 2.22 nuclear transformations per minute.
9. "Total trihalomethanes" means the sum of the concentrations of the following trihalomethane compounds: trichloromethane (chloroform), dibromo-chloromethane, bromodichloromethane and tribromo-methane (bromoform).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-402. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

R18-11-403. Analytical Methods
Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. R9-14-607(B).

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-404. Laboratories
A test result from a sample taken to determine compliance with an aquifer water quality standard shall be valid only if the sample has

been analyzed by a laboratory that is licensed by the Arizona Department of Health Services for the analysis performed.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-405. Narrative Aquifer Water Quality Standards

A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.

B. A discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.

C. A discharge shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

A. The aquifer water quality standards in this Section apply to aquifers that are classified for drinking water protected use.

B. The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

C. The following are the aquifer water quality standards for organic chemicals:

Pollutant	(mg/L)
Benzene	0.005
Benzo (a) pyrene	0.0002
Carbon Tetrachloride	0.005
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) pthalate	0.006
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Styrene	0.1
2,3,7,8-TCDD (Dioxin)	0.00000003
Tetrachloroethylene	0.005
Toluene	1
Trihalomethanes (Total)	0.10
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.20
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl Chloride	0.002
Xylenes (Total)	10

D. The following are the aquifer water quality standards for pesticides and polychlorinated biphenyls (PCBs):

Pollutant	(mg/L)
Alachlor	0.002
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
1,2-Dibromo-3-Chloropropane (DBCP)	0.0002
2,4,-Dichlorophenoxyacetic Acid(2,4-D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl	0.2
Picloram	0.5
Polychlorinated Biphenols (PCBs)	0.0005
Simazine	0.004
Toxaphene	0.003
2,4,5-Trichlorophenoxypropionic Acid (2,4,5-TP or Silvex)	0.05

E. The following are the aquifer water quality standards for radionuclides:

1. The maximum concentration for gross alpha particle activity, including Radium-226 but excluding radon and uranium, shall not exceed 15 pCi/l.
2. The maximum concentration for combined Radium-226 and Radium-228 shall not exceed 5 pCi/l.
3. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
4. Except for the radionuclides listed in this subsection, the concentration of man-made radionuclides causing 4 millirem total body or organ dose equivalents shall be calculated on the basis of a 2-liter-per-day drinking water intake using the 168-hour data listed in “Maximum Permissible Body Burdens and Maximum Permissible Con-

centration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, National Bureau of Commerce, as amended August 1963 (and no future editions), incorporated herein by reference and on file with the Office of the Secretary of State and with the Department. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year. The following average annual concentrations are assumed to produce a total body or organ dose of 4 millirem/year:

Radionuclide	Critical Organ	pCi/l
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

F. The aquifer water quality standard for microbiological contaminants is based upon the presence or absence of total coliforms in a 100-milliliter sample. If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.

G. The following are the aquifer water quality standards for turbidity:

1. One nephelometric turbidity unit as determined by a monthly average except that five or fewer nephelometric turbidity units may be allowed if it can be determined that the higher turbidity does not interfere with disinfection, prevent maintenance of effective disinfectant agents in water supply distribution systems, or interfere with microbiological determinations.
2. Five nephelometric turbidity units based on an average of two consecutive days.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).
Amended effective May 26, 1994 (Supp. 94-2).

R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers

A. All aquifers in the state are classified for drinking water protected use except for aquifers which are reclassified to a nondrinking water protected use pursuant to A.R.S. § 49-224 and A.A.C. R18-11-503.

B. Aquifer water quality standards for drinking water protected use apply to reclassified aquifers except where expressly superseded by aquifer water quality standards adopted pursuant to subsection (C) of this Section.

C. The Director shall adopt, by rule, aquifer water quality standards for reclassified aquifers within one year of the date of the order reclassifying the aquifer to a nondrinking water protected use. The Director shall adopt aquifer water quality standards for reclassified aquifers only for pollutants that are specifically identified in a petition for reclassification as prescribed by A.R.S. § 49-223(D) and A.A.C. R18-11-503(B). Aquifer water quality standards for reclassified aquifers shall be sufficient to protect the use of the reclassified aquifer.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Amended effective August 14, 1992 (Supp. 92-3).

R18-11-408. Petition for Adoption of a Numeric Aquifer Water Quality Standard

A. Any person may petition the Director to adopt, by rule, a numeric aquifer water quality standard for a pollutant for which no numeric aquifer water quality standard exists.

B. Petitions for adoption of a numeric aquifer water quality standard shall be filed with the Department and shall comply with the requirements applicable to petitions for rule adoption as provided by A.R.S. § 41-1033 and A.A.C. R18-1-302, except as otherwise provided by A.R.S. § 49-223 or this Section.

C. In addition to the requirements of A.A.C. R18-1-302, a petition for rule adoption to establish a numeric aquifer water quality standard shall include specific reference to:

1. Technical information that the pollutant is a toxic pollutant.
2. Technical information upon which the Director reasonably may base the establishment of a numeric aquifer water quality standard.
3. Evidence that the pollutant that is the subject of the petition is or may in the future be present in an aquifer or part of an aquifer that is classified for drinking water protected use. Evidence may include, but is not limited to, any of the following:
   a. A laboratory analysis of a water sample by a laboratory licensed by the Arizona Department of Health Services which indicates the presence of the pollutant in the aquifer.
   b. A hydrogeological study which demonstrates that the pollutant that is the subject of the petition may be present in an aquifer in the future. The hydrogeological study shall include the following:
      i. A description of the use that results in a discharge of the pollutant that is the subject of the petition.
      ii. A description of the mobility of the pollutant in the vadose zone and in the aquifer.
      iii. A description of the persistence of the pollutant in the vadose zone and in the aquifer.

D. Within 180 calendar days of the receipt of a complete petition for rule adoption to establish a numeric aquifer water quality standard, the Director shall make a written determination of whether the petition should be granted or denied. The Director shall give written notice by regular mail of the determination to the petitioner.

E. If the petition for rule adoption is granted, the Director shall initiate rulemaking proceedings to adopt a numeric aquifer water quality standard. The Director shall, within one year of the date that the petition for adoption of a numeric aquifer water quality standard is granted, either adopt a rule establishing a numeric aquifer water quality standard or publish a notice of termination of rulemaking in the Arizona Administrative Register.

F. If the petition for rule adoption is denied, the Director shall issue a denial letter to the petitioner which explains the reasons for the denial. The denial of a petition for rule adoption to establish a numeric aquifer water quality standard is not subject to judicial review.

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).

Appendix 1. Repealed

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 2. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 3. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 4. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 5. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 6. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

Appendix 7. Repealed

Historical Note
Adopted effective January 4, 1990 (Supp. 90-1).
Repealed effective August 14, 1992 (Supp. 92-3).

ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION

R18-11-501. Definitions
In addition to the definitions contained in A.R.S. § 49-201, the words and phrases of this Article shall have the following meaning:

1. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
2. "Hardrock areas containing little or no water" means areas of igneous or metamorphic rock which do not yield usable quantities of water.
3. "Nondrinking water protected use" means the protection and maintenance of aquifer water quality for a use other than human consumption.
4. "Usable quantities" means five gallons of water per day.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-502. Aquifer boundaries

A. Except as provided in subsection (B) of this rule, aquifer boundaries for the aquifers in this state are identified and defined as being identical to the hydrologic basin and subbasin boundaries, as found by the Director of the Department of Water Resources, Findings and Order In the Matter of The Designation of Groundwater Basins and Subbasins In The State of Arizona (dated June 21, 1984), pursuant to A.R.S. §§ 45-403 and 45-404, which is incorporated herein by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.

B. Excluded from the boundaries of the aquifers are hard rock areas which contain little or no water, as identified in Plate 1 of the Department of Water Resources, Water Resource Hydrologic Map Series Report Number 2 (dated January 1981) and as further identified in the Bureau of Mines, University of Arizona County Geologic Map Series (individual county maps dated 1957 through 1960), which are incorporated herein by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.

C. The Director may, by rule, modify or add an aquifer boundary provided that one or more of the following applies:

1. The Department of Water Resources modifies the boundaries of its basins or subbasins.
2. The Director is made aware of new technical information or data which supports refinement of an aquifer boundary.

D. Facilities located outside of the boundaries defined in these rules shall be subject to A.R.S. § 49-241 except as provided therein.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-503. Petition for reclassification

A. Any person may petition the Director to reclassify an aquifer from a drinking water protected use to a nondrinking water protected use pursuant to A.R.S. § 49-224(C).

B. A written petition for reclassification pursuant to A.R.S. § 49-224(C) or A.R.S. § 49-224(D) shall be filed with the Department and shall include the following categories of information:

1. The proposed protected use for which the reclassification is being requested.
2. The pollutant and affected aquifer water quality standards for which the reclassification is being requested.
3. A hydrogeologic report which demonstrates that the aquifer proposed for reclassification is or will be hydrologically isolated, to the extent described in A.R.S. § 49-224(C)(1). This report and demonstration of hydrologic isolation for the area containing such aquifer, and immediate adjacent geologic units, shall include at least the following:
   a. Hydrogeologic area maps and cross sections.
   b. An analysis of subsurface geology, including geologic and hydrologic separation.
   c. Water level elevation or piezometric level contour maps.
   d. Analysis of hydrologic characteristics of the aquifer and the immediate adjacent geologic units.
   e. Description of existing water quality and analysis of water chemistry.
   f. Projected annual quantity of water to be withdrawn.
   g. Identification of pumping centers, cones of depression and areas of recharge.
   h. A water balance.
   i. Existing flow direction and evaluation of the effects of seasonal and future pumping on flow.
   j. An evaluation as to whether the reclassification will contribute to or cause a violation of aquifer water quality standards in other aquifers, or in parts of the aquifer not being proposed for reclassification.
4. Documentation demonstrating that water from the aquifer or part of the aquifer for which reclassification is proposed is not being used as drinking water. This documentation shall include at least the following:
   a. A list of all wells or springs including their location, ownership and use within the aquifer or part of the aquifer being proposed for reclassification.

b. Identification of groundwater withdrawal rights, on file with the Department of Water Resources, within the aquifer or part of the aquifer being proposed for reclassification.
c. A comprehensive list of agencies, persons and other information sources consulted for aquifer use documentation.

5. A cost-benefit analysis developed pursuant to the requirements of A.R.S. § 49-224(C)(3), except for petitions submitted pursuant to A.R.S. § 49-224(D). This analysis shall identify potential future uses of the aquifer being proposed for reclassification, as well as other opportunity costs associated with reclassification, and shall contain a description of the cost-benefit methodology used, including all assumptions, data, data sources and criteria considered and all supporting statistical analyses.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-504. Agency action on petition

A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.

B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204, the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.

C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

R18-11-505. Public participation

A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.

B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

Historical Note
Adopted effective June 29, 1989 (Supp. 89-2).

R18-11-506. Rescission of reclassification

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204.

Historical Note
Adopted effective October 22, 1987 (Supp. 87-4).

ARTICLE 6. IMPAIRED WATER IDENTIFICATION

Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

R18-11-601. Definitions

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. "303(d) List" means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. "Attaining" means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. "AZPDES" means the Arizona Pollutant Elimination Discharge System.
4. "Credible and scientifically defensible data" means data submitted, collected, or analyzed using:
   a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
   b. Samples or analyses representative of water quality conditions at the time the data were collected;
   c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
   d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific community as appropriate for use in assessing the condition of the water.
5. "Designated use" means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. "EPA" means the U.S. Environmental Protection Agency.
7. "Impaired water" means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. "Laboratory detection limit" means a "Method Reporting Limit" (MRL) or "Reporting Limit" (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. "Monitoring entity" means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. "Naturally occurring condition" means the condition of a surface water or segment that would have occurred in the absence of pollutant loadings as a result of human activity.
11. "Not attaining" means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
    a. A TMDL is prepared and implemented for the surface water;
    b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or

Gmail

Natalie Kilker <kilker.natalie@azdeq.gov>

Fwd: Notice of Rulemaking Docket Opening -- AAC Title 18, Chapter 11, Articles 4 & 5

Jon Rezabek <rezabek.jon@azdeq.gov> Wed, Apr 19, 2023 at 6:05 PM
To: Natalie Kilker <kilker.natalie@azdeq.gov>

---------- Forwarded message ---------
From: **Decker, D. Lee** <DLD@gknet.com>
Date: Wed, Apr 19, 2023 at 4:53 PM
Subject: Notice of Rulemaking Docket Opening -- AAC Title 18, Chapter 11, Articles 4 & 5
To: Jon Rezabek <rezabek.jon@azdeq.gov>

Hi Jon,

In last week's Arizona Administrative Register, ADEQ published several notices of rulemaking docket opening (see attached document). On page 3 of the attached is a reference to an expedited rulemaking associated with certain sections in AAC Title 18, Chapter 11, Articles 4 and 5. Could you send more information regarding what ADEQ is proposing and for what reason?

Thanks,

Lee

Gallagher&Kennedy

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29 AAR 876 ADEQ Notices of Rulemaking Docket Opening T18 Chapter5 Chapter6 and Chapter11 04-14-2023.pdf
187K

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.

49-202. Designation of state agency

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, adopting, modifying or repealing rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through I of this section. Subsections C, D, G and I of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through I of this section apply to the certification of applications for or notices of coverage under those permits.

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for the purposes of subsection I of this section. In all other instances, the application is complete on submission of the information requested by the department.

F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:

1. The name, address and telephone number of the applicant.

2. A description of the project to be certified, including an identification of the WOTUS in which the certified activities will occur.

3. The project location, including latitude, longitude and a legal description.

4. A United States geological service topographic map or other contour map of the project area, if available.

5. A map delineating the ordinary high watermark of WOTUS affected by the activity to be certified.

6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to WOTUS from those activities.

7. A description of the materials being discharged to or placed in WOTUS.

8. A copy of the application for a federal permit or license that is the subject of the requested certification.

I. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification. Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.

J. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:

1. There is no disposal of construction and demolition wastes and contaminated wastewater.

2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.

3. Pollution from the operation of equipment in the mining area is removed and properly disposed.

4. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. For the purposes of this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.

5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.

6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

K. For the purposes of subsection J of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.

L. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:

1. 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.

2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.

3. Corrective actions taken pursuant to the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.

M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the

department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as the director's duties are prescribed in this chapter.

N. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection M of this section.

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.

49-221. Water quality standards in general; protected surface waters list

A. The director shall:

1. Adopt, by rule, water quality standards for all WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. For non-WOTUS protected surface waters, the director shall apply surface water quality standards established as of January 1, 2021, until specifically changed by the director pursuant to paragraph 2 of this subsection. Rules regarding the following shall not be adopted or applied as water quality standards for non-WOTUS protected surface waters:

(a) Antidegradation.

(b) Antidegradation criteria.

(c) Outstanding Arizona waters.

2. Adopt, by rule, water quality standards for non-WOTUS protected surface waters, by December 31, 2022, consistent with paragraph 1 of this subsection and as determined necessary in the rulemaking process. In adopting those standards, the director shall consider the unique characteristics of this state's surface waters and the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.

4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.

5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.

6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.

2. The uses that are being made or may be made of the reclaimed water.

3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration pursuant to title 3, chapter 3, article 4.1 of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

G. The director shall maintain and publish a protected surface waters list. The department shall publish the initial list on the department's website and in the Arizona administrative register within thirty days after September 29, 2021. Not later than December 31, 2022, the department shall adopt by rule the protected surface waters list, including procedures for determining economic, social and environmental costs and benefits. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 and may be appealed by any party that provides evidence of an actual adverse effect that the party appealing the decision would suffer as a result of the director's decision. All of the following apply to the protected surface water list:

1. The protected surface waters list shall include:

(a) All WOTUS.

(b) Any perennial, intermittent and ephemeral reaches and any impoundments of the following rivers, not including tributaries or reaches of waters wholly within tribal jurisdiction or reaches of waters outside of the United States:

(i) The Bill Williams river, from the confluence of the Big Sandy and Santa Maria rivers at 113°31'38.617"w, 34°18'22.373"n, to its confluence with the Colorado river at 114°8'9.854"w, 34°18'9.33"n.

(ii) The Colorado river, from the Arizona-Utah border at 111°32'35.741"w, 36°58'51.698"n, to the Arizona-Mexico border at 114°43'12.564"w, 32°43'6.218"n.

(iii) The Gila river, from the Arizona-New Mexico border at 109°2'52.8"w, 32°41'11.2015"n, to the confluence with the Colorado river at 114°33'28.145"w, 32°43'14.408"n.

(iv) The Little Colorado river, from the confluence of the east and west forks of the Little Colorado river at 109°28'7.131"w, 33°59'39.852"n, to its confluence with the Colorado river at 111°49'4.693"w, 36°12'10.243"n.

(v) The Salt river, from the confluence of the Black and White rivers at 110°13'39.5"w, 33°44'6.082"n, to the confluence with the Gila river at 112°18'5.704"w, 33°22'42.978"n.

(vi) The San Pedro river, from the Arizona-Mexico border at 110°9'1.704"w, 31°20'2.387"n, to the confluence with the Gila river at 110°47'0.905"w, 32°59'5.671"n.

(vii) The Santa Cruz river, from its origins in the Canelo Hills of southeastern Arizona at 110°37'3.968"w, 31°27'39.21"n, to its confluence with the Gila river at 111°33'26.02"w, 32°41'39.058"n.

(viii) The Verde river, from Sullivan lake at 112°28'10.588"w, 34°52'11.136"n, to its confluence with the Salt river at 111°39'48.32"w, 33°33'20.538"n.

(c) Any non-WOTUS waters of the state that are added under paragraphs 3 and 4 of this subsection.

2. Notwithstanding paragraph 1 of this subsection, the protected surface waters list shall not contain any of the following non-WOTUS waters:

(a) Canals in the Yuma project and ditches, canals, pipes, impoundments and other facilities that are operated by districts organized under title 48, chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for human consumption, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner and operator of the ditch or canal until the owner and operator withdraws its request.

(b) Irrigated areas, including fields flooded for agricultural production.

(c) Ornamental and urban ponds and lakes such as those owned by homeowners' associations and golf courses, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request.

(d) Swimming pools and other bodies of water that are regulated pursuant to section 49-104, subsection B.

(e) Livestock and wildlife water tanks and aquaculture tanks that are not constructed within a protected surface water.

(f) Stormwater control features.

(g) Groundwater recharge, water reuse and wastewater recycling structures, including underground storage facilities and groundwater savings facilities permitted under title 45, chapter 3.1 and detention and infiltration basins, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the owner of the groundwater recharge, water reuse or wastewater recycling structure until the owner withdraws its request.

(h) Water-filled depressions created as part of mining or construction activities or pits excavated to obtain fill, sand or gravel.

(i) All waste treatment systems components, including constructed wetlands, lagoons and treatment ponds, such as settling or cooling ponds, designed to either convey or retain, concentrate, settle, reduce or remove pollutants, either actively or passively, from wastewater before discharge or to eliminate discharge.

(j) Groundwater.

(k) Ephemeral waters except for those prescribed in paragraph 1, subdivision (b) of this subsection.

(l) Lakes and ponds owned and managed by the United States department of defense and other surface waters located on and that do not leave United States department of defense property, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the United States department of defense until it withdraws its request.

3. Unless listed in paragraph 2 of this subsection, the director shall add the following non-WOTUS surface waters to the protected surface waters list:

(a) All lakes, ponds and reservoirs that are public waters used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water.

(b) Perennial waters or intermittent waters of the state that are used as a drinking water source, including ditches and canals.

(c) Perennial or intermittent tributaries to the Bill Williams river, the Colorado river, the Gila river, the Little Colorado river, the Salt river, the San Pedro river, the Santa Cruz river and the Verde river.

(d) Perennial or intermittent public waters used for recreational or commercial fish consumption.

(e) Perennial or intermittent public waters used for water-based recreation such as swimming, wading, boating and other types of recreation in and on the water.

(f) Perennial or intermittent wetlands adjacent to waters on the protected surface waters list.

(g) Perennial or intermittent waters of the state that cross into another state, the Republic of Mexico or the reservation of a federally recognized tribe.

4. The director may add additional non-WOTUS surface waters to the protected surface waters list if all of the following apply:

(a) The water is not required to be listed under paragraph 1 or 3 of this subsection.

(b) The water is not excluded under paragraph 2 of this subsection.

(c) The economic, environmental and social benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list.

5. The director shall remove any erroneously listed, non-WOTUS waters from the protected surface waters list when the water is excluded under paragraph 2 of this subsection and shall not regulate discharges to those waters in the interim.

6. The director shall remove non-WOTUS waters from the protected surface waters list when the water is not required to be listed under paragraph 3 of this subsection and the economic, environmental and social benefits of removing the water outweigh the economic, environmental and social costs of retaining the water on the list.

7. The director, on an emergency basis, may add a water to the protected surface waters list if the director discovers an imminent and substantial danger to public health or welfare or the environment, if the water would otherwise qualify to be added under paragraph 3 of this subsection. Notwithstanding any other law, the emergency addition shall take effect immediately on the director's determination that describes the imminent and substantial danger in writing. Within thirty days after the director's determination, the department shall publish a notice of that determination in the Arizona administrative register and on the department's website. Waters added

under this subsection shall be incorporated into the protected surface waters list during the next rulemaking that follows the addition.

49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.

49-224. Aquifer identification, classification and reclassification

A. Not later than June 30, 1987 the director shall, by rule, identify and define the boundaries of all aquifers in this state utilizing, to the maximum extent possible, data available from the department of water resources.

B. All aquifers in this state identified and defined under subsection A of this section and any other aquifers subsequently discovered, identified and defined shall be classified for drinking water protected use unless the classification is changed in the manner provided in subsection C of this section.

C. The director, after consulting with the appropriate groundwater users advisory council established pursuant to title 45, chapter 2, article 2 if the aquifer is in an active management area, and a public hearing held pursuant to section 49-208, may change the classification of an aquifer or part of an aquifer for a protected use other than drinking water on making all of the following findings:

1. The identified aquifer or part of an aquifer is or will be so hydrologically isolated from other aquifers or other parts of the same aquifer that there is no reasonable probability that poorer quality water from the identified aquifer or part of an aquifer will cause or contribute to a violation of aquifer water quality standards in other aquifers or parts of the same aquifer.

2. Water from the identified aquifer or part of an aquifer is not being used as drinking water.

3. The short-term and long-term benefits to the public that would result from the degradation of the quality of the water in the identified aquifer or part of an aquifer below standards established pursuant to section 49-223, subsections A and B would significantly outweigh the short-term and long-term costs to the public of such degradation. Benefits and costs to be considered include economic, social and environmental.

D. Owners or operators of facilities whose discharges are solely responsible for creating an aquifer may petition the director for a classification of the aquifer for a non-drinking water use. The director may, by rule, classify that aquifer for a non-drinking water use upon making the findings prescribed in subsection C, paragraphs 1 and 2 of this section.

E. The director shall provide for public participation in proceedings under this section pursuant to section 49-208 and shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification.

ARIZONA DEPARTMENT OF AGRICULTURE
Title 3, Chapter 2, Articles 2, 7 & 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: **Sep 6, 2023**

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

FROM: Council Staff

DATE: **Jul 27, 2023**

SUBJECT: **ARIZONA DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 2, Articles 2, 7 & 8

Summary

This One Year Review Report from the Department of Agriculture (Department) relates to the following three (3) rules in Title 3, Chapter 2: R3-2-203, R3-2-701, R3-2-810. R3-2-203 relates to licenses and registrations for meat and poultry inspection, R3-2-701 relates to livestock inspection, and R3-2-810 relates to license fees related to dairy and dairy products control.

Laws 2022, 2nd Reg. Sess., Ch. 312, § 9 authorizes the Department to temporarily increase the livestock inspection service charge and various fees for licenses required to slaughter livestock, sell meat and poultry, and sell dairy products. Every year since 2011, the legislature appropriates general funds to the Department based on projected revenues from these fees and advances to the Department the funds anticipated to be collected during the year. This is done to support the functions of the Department and to provide the mandated oversight of these operations, including inspections of these facilities. When these fees are collected, they are returned to the general fund.

Proposed Action

The Department will submit a request to the Governor's Office in July 2023 to continue these fees under an exempt rulemaking for fiscal year 2024.

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:

Because this rule was adopted by exempt rulemaking, a formal economic, small business, and consumer impact comparison was not prepared.

Beginning in fiscal year 2011, the Legislature authorized the Department to temporarily increase the livestock inspection service charge and various fees for licenses required to slaughter livestock, sell meat and poultry, and sell dairy products. The fee increases were implemented through legislation that allowed for a one year increase in fees in order to make up for decreases in general fund appropriations. The Department receives approximately $218,000 per year as a result of these fee increases. The revenues generated from these fees are used to support the functions of the Department to provide the mandated oversight of these operations, including inspections of these facilities. Without the income generated, the Department would not be able to provide these services and the regulated community would not be able to conduct business, decreasing the overall impact to the State's economy.

Stakeholders include the Department; individuals with licenses to slaughter livestock, sell or exchange poultry, and sell dairy products; and individuals subject to livestock inspections by the Department.

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 benefits of the rules outweigh the costs imposed by the regulatory community, and are the least burdensome and cost effective.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Department states they have not received any written criticisms in the last five years.

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

The Department states the rules are clear, concise, and understandable.

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

The Department states the rules are consistent with other rules and statutes.

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

The Department states the rules are effective in achieving their objectives.

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

The Department states the rules are enforced as written.

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

The Department states the rules are not more stringent than corresponding federal law.

10. Has the agency completed any additional process required by law?

The Department indicates there are no additional processes required by law.

11. 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 a general permit is not used for R3-2-203 because doing so would result in additional regulatory requirements or costs being placed on the permit applicant. All other rules do not require a permit or license.

12. Conclusion

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1095. As indicated above, the Department received a one-time exemption from the rulemaking requirements to adopt rules necessary to temporarily increase the livestock inspection service charge and various fees for licenses required to slaughter livestock, sell meat and poultry, and sell dairy products. The Department intends to seek approval to submit another exempt rulemaking to continue these fee increases and Council staff recommends approval of this report.

KATIE HOBBS
Governor

JEFF GRANT
Interim Director

Arizona Department of Agriculture

Physical Address: 1110 W. Washington Street, Suite 450 Phoenix, AZ 85007
Mailing Address: 1802 W. Jackson Street, #78 Phoenix, AZ 85007

June 21, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: One-Year Review Report for A.A.C. Title 3, Chapter 2, Articles 2, 7 and 8

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's (Department) one-year review report for A.A.C. Title 3, Chapter 2, R3-2-203, R3-2-701 and R3-2-810 which is due on August 11, 2023. This rule has been reviewed, and there is no intention for this rule to expire under § 41-1056(J). However, this rule sets fees for fiscal year 2023. The Department intends to file an exempt rulemaking in accordance with Laws 2023, 1st Reg. Sess., Ch. 138, 9 in order to continue these fees in fiscal year 2024. Also enclosed are copies of the 2022 session law, rule and the authorizing statutes.

The Department certifies, in accordance with A.R.S. § 41-1056(A), that it is in compliance with A.R.S. § 41-1091.

Please contact Jerome Rosa at (602) 542-7186 or jrosa@azda.gov with any questions about this report.

Sincerely,

Jeff Grant
Interim Director

Enclosures:
One-Year Review Report
2022 Session Law
Current Rules
Authorizing Statutes

ARIZONA DEPARTMENT OF AGRICULTURE

1 YEAR REVIEW REPORT

Title 3, Chapter 2, Articles 2, 7, 8

Due Date: August 11, 2023

Submitted: June 21, 2023

1. Authorization of the rule by existing statutes

Authorizing Statute: A.R.S. § 3-107(A)(1); Laws 2022, 2nd Reg. Sess., Ch. 312, § 9.

Implementing Statute: Laws 2022, 2nd Reg. Sess., Ch. 312, § 9; A.R.S. § § 3-607; 3-619(A); 3-1337; 3-2003; 3-2081.

Statute or session law authorizing the exemption; Laws 2022, 2nd Reg. Sess., Ch. 312, § 9.

2. The objective of each rule:

Rule	Objective
R3-2-203	Sets out temporary fee increases as authorized by 2022 session law for the required licenses related to slaughtering livestock and selling or exchanging meat or poultry.
R3-2-701	Sets out temporary fee increase as authorized for 2022 session law for the livestock inspection service charge of $10.
R3-2-810	Sets out temporary fee increases as authorized by 2022 session law for the required licenses related to selling dairy and dairy products.

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

R3-2-203, R3-2-701, R3-2-810 are effective in achieving their objectives.

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

R3-2-203, R3-2-701, R3-2-810 are consistent with other rules and statutes.

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

R3-2-203, R3-2-701, R3-2-810 are enforced as written.

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

R3-2-203, R3-2-701, R3-2-810 are clear, concise and understandable.

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

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

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

Because this rule was adopted by exempt rulemaking, a formal economic, small business, and consumer impact comparison was not prepared.

Beginning in fiscal year (FY) 2011, the Legislature authorized the Department to temporarily increase the livestock inspection service charge and various fees for licenses required to slaughter livestock, sell meat and poultry, and sell dairy products. The Department increased the livestock inspection service charge from $3 per request, pursuant to A.R.S. § 3-1337, to $10 (R3-2-701(E)). The Department increased the fees to obtain a license to slaughter livestock, sheep, goats or swine from $5, $15 and $80, pursuant to A.R.S. § 3-2003, to $250, 300 and $450, (R3-2-203(D)). The Department increased the fees to obtain a meat license from $10, pursuant to A.R.S. § 3-2081, to fees ranging from $150 to $500, depending on the type of licenses (R3-2-203(E)). The Department increased the fees to obtain a dairy license from between $25 and $50 pursuant to A.R.S. 3-607(E), to fees ranging between $25 and $300, depending on the operation. Plus an additional $2,500 for pasteurizers (R3-2-810). The fee increases were implemented through legislation that allowed for a one year increase in fees in order to make up for decreases in general fund appropriations. The Department receives approximately $218,000 per year as a result of these fee increases. The revenues generated from these fees are used to support the functions of the Department to provide the mandated oversight of these operations, including inspections of these facilities. Without the income generated, the Department would not be able to provide these services and the regulated community would not be able to conduct business, decreasing the overall impact to the State's economy. The legislature appropriates general funds to the Department based on projected revenues from these fees, and then when these fees are collected, they are returned to the general fund. In essence, the legislature advances the funds anticipated to be collected during the year from these fees with the exception that the Department will return what is actually collected. By continuing these fee increases, the Department anticipates it will be able to collect an a amount similar to that appropriated by the legislature for this purpose. Each year, since FY 2011, similar legislation has passed allowing the Department to keep up these fee increases for one more year at a time. The current fee increase will end at the end of the FY 2023. Laws 2023, 1st Reg. Sess., Ch. 138, **§** 9 authorizes these fees to continue in FY 2024. The Department will be filing an exempt rulemaking with the Secretary of State's Office to continue these fees in FY 2024.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes____No x___**

No business competitive analysis has been received.

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

There is not a previous one-year review report because R3-2-203, R3-2-701, and R3-2-810 became effective September 24, 2022.

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

The Department has determined that the benefits of the rules R3-2-203, R3-2-701, R3-2-810 outweigh the costs imposed by the regulatory community, and are the least burdensome and cost effective.

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

R3-2-203, R3-2-701 and R3-2-810 are not more stringent than Federal law.

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

R3-2-203 requires a license to conduct certain activities. R3-2-701 does not require a permit, and R3-2-810 sets out fees for certain licenses but does not itself require or establish any permits or licenses. The Department does not use a general permit for R3-2-203 because that would increase the cost for licensees by requiring them to pay the licensing fee for activities that the licensees do not engage in. Additionally, any duplication of information provided by an applicant to obtain multiple licenses would be minimal.

14. Proposed course of action

The Department proposes to maintain the rule as is. The Department intends to submit a request to the Governor's Office Policy Advisor in July, 2023 to request approval to conduct rulemaking for rules R3-2-203, 701, and 810, pursuant to A.R.S. § 41-1039(A). Within 30-days of receiving approval to proceed with rulemaking from the Governor's Office Policy Advisor, the Department will file an exempt rulemaking with the Secretary of State's Office in accordance with Laws 2023, 1st Reg. Sess., Ch. 138, § 9 to continue these fees from fiscal year 2023 to fiscal year 2024 for services provided in fiscal year 2024.

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
LIVESTOCK INSPECTION						
Equine Trader Permit	A.R.S. § 3-1348	7	7	7	7	14
Ownership and Hauling Certificate for Equines	A.R.S. §§ 3-1344 & 3-1345	14	14	14	14	28
EGG PRODUCTS AND CONTROL						
Annual Licensing	A.R.S. § 3-714	10	10	10	10	20
AQUACULTURE						
Aquaculture Facility	A.R.S. § 3-2907 R3-2-1004	14	14	30	14	44
Fee Fishing Facility	R3-2-1005	14	14	30	14	44
Processor	R3-2-1006	14	14	30	14	44
Transporter	R3-2-1007	14	14	30	14	44
Special Licenses	A.R.S. § 3-2908	14	14	30	14	44

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-201. Definitions

In addition to the definitions provided in A.R.S. §§ 3-101 and 3-2001 and 9 CFR 301.2 and 9 CFR 381.1, which are incorporated by reference in R3-2-202, the following terms apply to this Article:

1. "Animal" means any steer, heifer, calf, cow, bull, sheep, goat, swine, horse, ass, mule, burro, ratite, or poultry.
2. "Dead animal" means an animal that died other than by slaughter in a place where inspection is performed by the Department or by the United States Department of Agriculture.
3. "Inedible meat" means:
   a. Meat or meat food product from an animal that died by slaughter or was processed in an inspected slaughterhouse, but which an inspector did not pass as fit for human consumption; or
   b. Meat condemned by a federal or state inspector.
4. "Rendering" means the conversion of packinghouse waste or dead animal carcasses and parts into industrial fat, oil, or other product unfit for human consumption.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1). Section R3-2-201 renumbered from Section R3-9-201 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 10 A.A.R. 2661, effective August 7, 2004 (Supp. 04-2).

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

All meat and poultry inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, 2016, as amended by 80 FR 75590-01 (December 2, 2015), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed online at www.gpo.gov/fdsys.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1). Section R3-2-202 renumbered from Section R3-9-202 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 465, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1971, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 15 A.A.R. 1890, effective October 21, 2009 for 180 days (Supp. 09-4). Emergency expired; Section amended by final rulemaking at 16 A.A.R. 351, effective April 3, 2010 (Supp. 10-1). Amended by emergency rulemaking at 19 A.A.R. 150, effective January 9, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 1789, effective July 9, 2013 (Supp. 13-3). Amended by final rulemaking at 22 A.A.R. 2167, effective October 2, 2016 (Supp. 16-3).

R3-2-203. Licenses; Registration; Records

A. Any person operating a business in any of the following categories shall obtain the appropriate license from the Department.
   1. Types of slaughter licenses.
      a. Official slaughter – the slaughtering of animals in a slaughterhouse for sale for human consumption.
      b. Exempt slaughter.
         i. Exempt non-mobile slaughter – the slaughtering or dressing of an animal in a stationary building for human consumption, that is not sold or offered for sale.
         ii. Exempt mobile slaughter – the slaughtering or dressing of an animal for human consumption

by using a mobile structure on the property of the animal's owner, that is not sold or offered for sale.

2. Types of meat licenses.
   a. Broker – any person, firm or corporation engaged in buying or selling carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments. A broker negotiates purchases or sales of these products other than for the broker's own account, as an employee of another person, and is paid a commission.
   b. Exempt – any person, firm, or corporation engaged in processing meat or poultry products without meat inspection, for an individual owner of meat that is not for sale.
   c. Distributor – any person, firm, or corporation engaged in receiving carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments and storing or distributing these products to commercial outlets, processors, or individuals. A distributor does not process any of these products.
   d. Jobber – any person, firm, or corporation with an established place of business that buys meat or poultry food products and offers the products for sale to someone other than the end-use consumer.
   e. Pet food manufacturer – any person, firm, or corporation engaged in manufacturing animal food from meat or poultry unfit for human consumption.
   f. Processor – any person, firm, or corporation that changes meat or poultry food products by cutting, mixing, blending, canning, curing or otherwise preparing meat or meat food products wholesale for human consumption.
   g. Renderer – any person, firm, or corporation that renders and tallows and any person, firm, or corporation engaged commercially in the hide, hair, or pelt removal, cutting up, or rendering of animals.

B. Applications for a license or registration pursuant to A.R.S. § 3-2081(A), shall be made on forms provided by the Department and shall contain the following:
1. The name of the applicant and the applicant's partners, officers or directors of the business, if any;
2. The business name, mailing address, telephone number, and Social Security number of the applicant;
3. The exact location of the business, if different from subsection (B)(2).

C. All persons licensed or registered under this Section, and all other persons described in A.R.S. § 3-2081, shall maintain the records required under A.R.S. § 3-2081 for a minimum of one year. In addition, all registered dead animal haulers, licensed rendering and tallow plants, and pet food manufacturing plants shall prepare and submit the reports required under A.R.S. § 3-2695 and shall include copies of those reports as part of records maintained under this Section and A.R.S. § 3-2081.

D. During fiscal year 2023, the fee to obtain or renew a license to slaughter is:
1. Not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: $250.
2. For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: $300.
3. For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: $450.

E. During fiscal year 2023, the fee to obtain or renew a meat license is:
1. For a broker, $450.
2. For exempt processing, $300.
3. For a distributor, $500 for a large distributor (more than $100,000 in sales per calendar year) and $150 for a small distributor (not to exceed $100,000 in sales per calendar year).
4. For a jobber, $450.
5. For a pet food manufacturer, $300.
6. For a processor, $300.
7. For meat storage, $450.
8. For transportation, $300.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-208 renumbered from Section R3-9-208 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-203 renumbered to R3-2-208; new Section R3-2-203 renumbered from Section R3-2-208 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2017 (August 12, 2022), effective September 24, 2022 (Supp. 22-3).

R3-2-204. Official Slaughter Establishment

In addition to the requirements in A.R.S. § 3-2051, the following shall be provided when slaughtering cattle, calves, sheep, and hogs:
1. Cattle.
   a. A metal knocking box or concrete box with metal door to confine the animals prior to stunning;
   b. A separately drained, dry landing area at least five feet wide in front of the knocking box;
   c. A curbed-in bleeding area at least eight feet wide and seven feet long, located so that blood will not splash upon stunned animals lying in the dry landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least six inches high and six inches wide;
   d. A separately drained area at least five feet from the curbed-in bleeding area to the siding bed;
   e. A distance of at least 14 feet from the vertical of the dropoff to the vertical of the hoist where carcasses are eviscerated. For multiple-bed plants, this distance shall be increased to 16 feet;

is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

R3-2-622. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

ARTICLE 7. LIVESTOCK INSPECTION

R3-2-701. Department Livestock Inspection

A. A Division employee shall inspect range cattle, as defined in R3-2-702(A), at a ranch if the owner or agent of livestock is:
1. Moving cattle out-of-state,
2. Transferring cattle ownership, or
3. Shipping cattle for custom slaughter.

B. An owner or agent of cattle cannot be issued both non-range and range self-inspection certificates.

C. With prior approval from a Division employee, livestock can be moved to a licensed custom slaughter facility using the livestock owner's or agent's or feedlot operator's self-inspection certificate. A Division employee must validate the self-inspection certificate prior to slaughter.

D. The Department shall not issue a self-inspection certificate to an owner or agent of livestock or feedlot operator if that individual has been convicted of a felony under A.R.S. Title 3 within the three-year period before the date on the self-inspection application. The Department may deny self-inspection to an applicant if within the five-year period before the date on the self-inspection application, the applicant was convicted of any A.R.S. Title 3 offense or an A.R.S. Title 13 offense related to livestock. A Division employee shall inspect livestock if an applicant is denied self-inspection authority.

E. During fiscal year 2023, livestock officers and inspectors shall collect from the person in charge of cattle, dairy cattle, or sheep inspected a service charge of $10 plus the per head inspection fee set out in A.R.S. § 3-1337 for making inspections for the transfer of ownership, sale, slaughter or transportation of the animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-701 renumbered from Section R3-9-701 (Supp. 91-4). Section R3-2-701 repealed; new Section R3-2-701 adopted effective February 4, 1998 (Supp. 98-1). Error in subsection (A)(3) corrected under R1-1-109, filed with the Office of the Secretary of State October 18, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2017 (August 12, 2022), effective September 24, 2022 (Supp. 22-3).

R3-2-702. Livestock Self-inspection

A. Definitions.

"Dairy" means an owner or agent of a place or premise where one or more lactating animals are kept for milking purposes and from which a part or all of the milk is provided, sold, or offered for sale that meets both of the following conditions: the livestock is not permitted to range and the dairy is permitted by the Department. If these conditions are met, then a Division employee may grant the applicant dairy status.

"Description" means sex, breed, color, and markings, as applicable to the type of livestock.

"Exhibition" means an event including a fair, show, or field day that has as its primary purpose the opportunity for a member of a livestock organization, including 4-H and FFA, to display an animal raised by the individual in a judged competition.

"Feedlot" means an operator of a beef cattle feedlot or feed yard in which the livestock is not permitted to range and that is licensed by the Department. If these conditions are met, then a Division employee may grant the applicant feedlot status.

"Livestock" means cattle, sheep, goats, and swine.

"Livestock broker" means an owner or agent who engages in the business of buying and selling livestock and has immediate possession of the livestock for 10 days or less in which the livestock is not permitted to range. If these conditions are met, then a Division employee may grant the applicant livestock broker status.

"Non-range" means any owner or agent of an enclosed property that is 100 acres or less that meets all of the following conditions: the fence enclosing the livestock is well maintained, the livestock is not permitted to range, and the owner or agent of the livestock lives where the livestock are kept. If these conditions are met, then a Division employee may grant the applicant non-range status.

"Range" means every character of lands, enclosed or unenclosed, outside of cities and towns, upon which livestock is permitted by custom, license or permit to roam and feed. A.R.S. § 3-1201(7)

"Range cattle" means cattle *customarily permitted to roam upon the ranges of the state, whether public domain or in private control, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes.* A.R.S. § 3-1201(8)

B. Application.

100°C (212°F)	0.01 seconds

Historical Note
Table 1 made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Table 1 heading added for clarity (Supp. 21-3).

R3-2-808. Frozen Desserts Reconstituted from Powdered Mixes
Except for R3-2-807(A)(8), retail establishments that reconstitute frozen desserts from powdered mixes and dispense the desserts on the premises shall comply with the requirements prescribed in R3-2-807 and the following standards:

1. All equipment, containers, and utensils shall be washed and air-dried after each use and shall be sanitized before each use, in accordance with the sanitation standards established in subsection R3-2-807(A)(7)(b).
2. When not in use, all equipment, utensils, and containers shall be stored above the floor in a clean, dry location free from dust, moisture, insects, rodents, or other possible sources of contamination.
3. Excess quantities of the reconstituted frozen dessert shall not be made from the powdered mix in advance and stored outside the dispensing machine.
4. Frozen desserts shall be reconstituted according to the directions provided by the powdered mix manufacturer.

Historical Note
Adopted effective May 11, 1977 (Supp. 77-3). Section R3-2-808 renumbered from R3-5-08 (Supp. 91-4). Section R3-2-808 renumbered to Section R3-2-809; new Section R3-2-808 adopted effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-809. Medicinal, Chemical, and Radioactive Residues in Milk

A. All dairies shall comply with the following procedures to exclude medicinal, chemical, and radioactive residues from milk intended for human consumption:

1. Identify all cows that have been treated with or have consumed medicinal, chemical, and radioactive agents capable of being secreted in milk;
2. Maintain a written record of the date of treatment, type, and quantity of the medicine or chemical administered to each cow;
3. Milk all treated cows last, or with separate equipment to prevent contamination of the wholesome milk supply;
4. Clean and sanitize all equipment, utensils, and containers used in the handling of milk from the treated cows before the equipment is used in the handling of any milk intended for human consumption; and
5. Discard all milk from the treated cows for the period of time recommended by the attending veterinarian or as indicated on the package or label of the medicine used in the treatment of the cow.

B. Enforcement.

1. When the residue of a chemical, medicinal, or radioactive agent is found in the milk of a dairy and the Dairy Supervisor determines that the residue may be deleterious to human health, the Director shall immediately suspend the dairy from further selling, offering for sale, or distributing milk for human consumption until:
   a. The Dairy Supervisor determines that the practice causing the contamination of the milk has been corrected and the dairy is in compliance with the procedures established in subsection (A);
   b. Any milk that has not been excluded from human consumption as required by subsection (A) is appropriately discarded; and
   c. The first milk shipment following suspension indicates negative test results for medicinal, chemical, or radioactive residues.
2. If the Dairy Supervisor determines that a dairy is not in compliance with the procedures established in subsection (A), the Dairy Supervisor may suspend the dairy until the prescribed procedures are observed.

Historical Note
Section R3-2-809 renumbered from R3-2-808 and amended effective December 2, 1998 (Supp. 98-4).

R3-2-810. License Fees
During fiscal year 2023, an applicant shall pay the following fee to obtain or renew a dairy license:

1. For a license to operate a milk distributing plant or business: $300 plus $2,500 per pasteurizer.
2. For a license to operate a manufacturing milk processing plant: $100.
3. For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: $150 plus $2,500 per pasteurizer.
4. For a license to engage in the business of producer-distributor: $150.
5. For a license to engage in the business of producer-manufacturer: $25.
6. For a license to engage in the manufacture of trade products: $100.
7. For a license to engage in the business of selling at wholesale milk or dairy products, or both: $100.
8. For a license to sample milk or cream: an initial fee of $50 and a renewal fee of $30.

Historical Note
New Section made by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2017 (August 12, 2022), effective September 24, 2022 (Supp. 22-3).

R3-2-811. Dairy Farm Permit

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 312

HOUSE BILL 2861

AN ACT

AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1510; AMENDING SECTION 49-210, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-211; APPROPRIATING MONIES; RELATING TO THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 41, chapter 10, article 1, Arizona Revised Statutes, is amended by adding section 41-1510, to read:

41-1510. Water infrastructure and commerce grant fund

A. THE WATER INFRASTRUCTURE AND COMMERCE GRANT FUND IS ESTABLISHED CONSISTING OF LEGISLATIVE APPROPRIATIONS, FEDERAL MONIES AND PRIVATE DONATIONS. THE CHIEF EXECUTIVE OFFICER SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. MONIES IN THE FUND MAY BE USED TO PROVIDE GRANTS TO ELIGIBLE ENTITIES FOR CONTRACTING FOR THE DESIGN AND CONSTRUCTION OF WATER INFRASTRUCTURE AT THE ELIGIBLE ENTITY'S LOCATION. THE AUTHORITY MAY RETAIN UP TO ONE PERCENT OF THE MONIES IN THE FUND ANNUALLY TO ADMINISTER THE FUND.

B. THE FOLLOWING ENTITIES ARE ELIGIBLE TO APPLY FOR AND RECEIVE GRANT MONIES PURSUANT TO THIS SECTION:

1. A PUBLIC SERVICE CORPORATION THAT PROVIDES WATER SERVICE PURSUANT TO A CERTIFICATE OF CONVENIENCE AND NECESSITY ISSUED BY THE CORPORATION COMMISSION AND THAT IS ACTING ON BEHALF OF AN EMPLOYER PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION.

2. AN EMPLOYER WITH MORE THAN TWO HUNDRED FIFTY EMPLOYEES THAT IS LOCATED IN A COUNTY WITH A POPULATION OF MORE THAN FOUR HUNDRED THOUSAND PERSONS AND LESS THAN ONE MILLION PERSONS.

C. THE AUTHORITY SHALL:

1. PRESCRIBE A SIMPLIFIED FORM AND PROCEDURE TO APPLY FOR AND APPROVE GRANTS.

2. ESTABLISH REQUIREMENTS AND CRITERIA BY WHICH GRANTS WILL BE AWARDED, WHICH SHALL INCLUDE AT LEAST THE FOLLOWING:

(a) GRANTS TO ELIGIBLE APPLICANTS ONLY FOR NEW WATER INFRASTRUCTURE PROJECTS THAT ARE LOCATED AT THE ELIGIBLE APPLICANT'S PROPERTY IN A COUNTY WITH A POPULATION OF MORE THAN FOUR HUNDRED THOUSAND PERSONS AND LESS THAN ONE MILLION PERSONS.

(b) GRANTS FOR PROJECTS THAT CREATE NEW JOBS.

(c) GRANTS FOR PROJECTS THAT BEGIN AFTER JANUARY 1, 2022.

(d) GRANTS THAT ARE ALLOCATED AND DISTRIBUTED NOT LATER THAN DECEMBER 31, 2024.

(e) APPLICANTS MAY RECEIVE MORE FAVORABLE CONSIDERATION FOR GRANT MONIES IF THE APPLICANT INCLUDES COLLABORATION AND COOPERATION WITH OTHER MEMBERS AND ENTITIES IN THE COMMUNITY.

(f) APPLICANTS SHALL CERTIFY THAT THEY ARE ELIGIBLE TO RECEIVE GRANT MONIES, SHALL DESCRIBE THE PROJECT AND SERVICES REQUESTED AND WHY THE PROJECT AND SERVICES ARE NEEDED AND SHALL CERTIFY THAT ALL GRANT MONIES WILL BE USED IN COMPLIANCE WITH THIS SECTION, THE AUTHORITY'S REQUIREMENTS, THE APPLICATION REQUIREMENTS AND PROCESSES AND OTHERWISE APPLICABLE LAW.

D. BEFORE AWARDING A GRANT PURSUANT TO THIS SECTION, THE AUTHORITY SHALL PREPARE A WRITTEN STATEMENT THAT IS SIGNED BY THE CHIEF EXECUTIVE OFFICER, THAT ASSESSES THE DIRECT ECONOMIC IMPACT OF THE GRANT, INCLUDING THE NUMBER OF NEW JOBS THAT WILL BE CREATED, AND THAT CONTAINS A FINDING THAT THE AWARD OF GRANT MONIES IS IN THE BEST INTEREST OF THIS STATE.

E. ON OR BEFORE DECEMBER 15 OF EACH YEAR, THE AUTHORITY SHALL SUBMIT AN ANNUAL REPORT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE. THE REPORT SHALL INCLUDE, AT A MINIMUM, THE AMOUNT OF ACTUAL EXPENDITURES FROM THE FUND BY PROJECT AND AN EXPENDITURE PLAN FOR ALL REMAINING MONIES BY PROJECT.

Sec. 2. Section 49-210, Arizona Revised Statutes, is amended to read:

49-210. Water quality fee fund; appropriation; exemption; monies held in trust

A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-211, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.

B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

D. Monies in the water quality fee fund shall be used for the following purposes:

1. To issue aquifer protection permits pursuant to section 49-241.

2. The aquifer protection permit registration fee procedures pursuant to section 49-242.

3. Dry well registration fee procedures pursuant to section 49-332.

4. Technical review fee procedures pursuant to section 49-353.

5. Inspection fee procedures pursuant to section 49-104, subsection C.

6. To issue permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.

7. Operator certification pursuant to sections 49-352 and 49-361.

8. Paying the cost of implementing section 49-203, subsection A, paragraph 7 and section 49-221, subsection E.

9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.

10. To implement and administer the underground injection control permit program established pursuant to article 3.3 of this chapter.

11. To implement and administer the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

Sec. 3. Title 49, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 49-211, to read:

49-211. Direct potable reuse of treated wastewater; fees; rules

A. ON OR BEFORE DECEMBER 31, 2024, THE DIRECTOR SHALL ESTABLISH BY RULE PERMIT FEES SUFFICIENT TO ADMINISTER A DIRECT POTABLE REUSE OF TREATED WASTEWATER 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. ON OR BEFORE DECEMBER 31, 2024, THE DIRECTOR SHALL ADOPT ALL RULES NECESSARY TO ESTABLISH AND IMPLEMENT A DIRECT POTABLE REUSE OF TREATED WASTEWATER PROGRAM, INCLUDING RULES ESTABLISHING PERMITTING STANDARDS AND A PERMIT APPLICATION PROCESS.

Sec. 4. Arizona water protection fund; use of monies

Notwithstanding section 45-2114, Arizona Revised Statutes, in fiscal year 2022-2023, the Arizona water protection fund commission may grant to the department of water resources up to $336,000 of the unobligated balance in the Arizona water protection fund established by section 45-2111, Arizona Revised Statutes, to pay for administrative costs of the department in fiscal year 2022-2023.

Sec. 5. Underground storage tank revolving fund; use of monies

Notwithstanding any other law, in fiscal year 2022-2023, the department of environmental quality may use up to $6,531,000 from the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, in fiscal year 2022-2023 for:

1. Administrative costs of the department.

2. Remediating sewage discharge issues in Naco, Arizona and other border areas of this state.

Sec. 6. Arizona water banking fund; use of monies

In addition to the purposes provided in section 45-2425, Arizona Revised Statutes, monies appropriated to the Arizona navigable stream adjudication commission from the Arizona water banking fund established by

section 45-2425, Arizona Revised Statutes, may be used in fiscal year 2022-2023 to pay legal fees.

Sec. 7. Appropriation limit; water quality assurance revolving fund

Notwithstanding section 49-282, Arizona Revised Statutes, the appropriation from the state general fund to the water quality assurance revolving fund established by section 49-282, Arizona Revised Statutes, for fiscal year 2022-2023 may not exceed $15,000,000.

Sec. 8. Department of environmental quality; vehicle emissions testing fees; exemption from rulemaking

A. Notwithstanding any other law, the director of environmental quality shall charge fees in fiscal year 2022-2023 that are not more than the fees that were charged in fiscal year 2021-2022 for tests conducted in Area A, as defined in section 49-541, Arizona Revised Statutes.

B. The department of environmental quality is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until July 1, 2023 for the purpose of establishing fees pursuant to this section.

Sec. 9. Agricultural fees; continuation; intent; rulemaking exemption

A. Notwithstanding any other law, the director of the Arizona department of agriculture, with the assistance of the department of agriculture advisory council, may continue, increase or lower existing fees from fiscal years 2020-2021 and 2021-2022 in fiscal year 2022-2023 for services provided in fiscal year 2022-2023.

B. The legislature intends that the additional revenue generated by the fees prescribed in subsection A of this section not exceed $218,000 to the state general fund, $113,000 to the pesticide trust fund established by section 3-350, Arizona Revised Statutes, and $26,000 to the dangerous plants, pests and diseases trust fund established by section 3-214.01, Arizona Revised Statutes, in fiscal year 2022-2023.

C. The Arizona department of agriculture is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until July 1, 2023 for the purpose of establishing fees pursuant to this section.

APPROVED BY THE GOVERNOR JUNE 28, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 28, 2022.

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.

2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.

3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.

5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.

7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.

8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.

9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.

10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-607. Annual licenses; inspections; revocation; fees; exceptions

A. A person shall not operate a milk distributing plant or a manufacturing milk processing plant, engage in the business of producer-distributor or producer-manufacturer, or engage in the business of selling at wholesale milk or dairy products, or both, without a license. This section does not require:

1. An Arizona dairy farm producing raw milk for sale to be processed to secure a license to operate.

2. A retailer or wholesaler to secure a license from the division to convert a pasteurized mix into frozen dessert.

3. A food establishment regulated by the department of health services to secure a license from the division to manufacture frozen desserts using pasteurized milk or pasteurized milk-based products if the frozen dessert is manufactured and sold at the same food establishment for consumption on the premises and the food establishment has submitted a plan for approval to the regulatory authority under title 36 demonstrating that the manufacturing process complies with the rules adopted pursuant to section 36-136, subsection I, including pasteurization as defined in rule. The division or the regulatory authority under title 36 may require a food establishment that manufactures frozen desserts using pasteurized milk or pasteurized milk-based products to provide samples of the frozen dessert to verify that the frozen dessert is pasteurized.

B. An application for a license shall be in writing in the form the associate director prescribes and shall be accompanied by the required filing fee. On receipt of an application, the associate director or an authorized representative shall examine the premises in which the applicant proposes to do business, and if it appears that the applicant has complied with all provisions of law, the license shall be issued.

C. After issuance of the first annual license, a license may be issued on inspection of the premises and payment not later than February 1 of each year of the required fee. The inspection shall be made by the associate director or an authorized representative to determine whether the premises are maintained in compliance with law. A written report of the inspection shall be filed in the division office. An annual license is valid for the period beginning January 1 and ending December 31 of each year, and a license that is not renewed on or before February 1 of each year is void.

D. An application for a license to produce grade A milk for human consumption shall be made in the manner prescribed by subsections A and B of this section. The license shall be valid until revoked for failure to comply with the provisions of this article relating to the production of milk. The associate director may suspend a license pending correction of deficiencies that violate this article. If the identified deficiencies are not corrected within a reasonable time after the licensee is notified, the associate director may proceed to revoke the license. Notice of a pending revocation shall be in writing, stating the cause, and setting a time during which the licensee may correct the cause for revocation. If the cause for revocation is not corrected within the time specified, the associate director, after a hearing and three days' notice of intention, may revoke the license. The director shall review the associate director's action on request of any person adversely affected by the action. A person holding a permit issued by a governmental agency operating outside of this state whose requirements are substantially the same as the requirements of this state shall be deemed to have a license meeting the requirements of this article, provided the facilities have first been inspected and approved also by a resident Arizona inspector, if in the opinion of the associate director such an inspection should be made. Any expense incurred for such an inspection shall be at the expense of the licensee.

E. Fees shall be paid as follows:

1. For a license or renewal of a license to operate a milk distributing plant or business, $50.

2. For a license or renewal of a license to operate a manufacturing milk processing plant, $50.

3. For a license or renewal of a license to engage in the business of producer-distributor or producer-manufacturer, $25.

4. For a license or renewal of a license to engage in the business of selling at wholesale milk or dairy products, or both, $25.

F. The associate director or dairy inspectors are authorized to inspect premises affected by this article and located outside of this state, and they shall receive subsistence and travel expenses in the amount provided for state officers, which shall be paid to the inspector by the owner of the premises inspected.

G. This section does not apply to a producer of raw milk.

3-619. Qualification of sampler; license; certificate of proficiency; revocation

A. No person shall sample milk or cream for the purpose of determining the amount of milk fat contained therein where the result of the test is used as a basis for payment for the milk or cream, or for official inspection or public record, unless licensed by the division. An applicant for a license shall give proof satisfactory to the associate director of his ability to perform his duties and shall pay a license fee of five dollars. The license shall be valid for the calendar year in which issued and upon payment of a renewal fee of one dollar fifty cents shall be renewed for each year in which the licensee desires to operate. A license not renewed prior to February 1 is void.

B. No person shall test milk or cream for the purpose of determining the butterfat content thereof, when the result of the test is used to determine the purchase sales value or the legal standard of the product, unless the tester has a tester's license. A tester's license may be obtained from the division by presenting a certificate of proficiency, and payment of a license fee of five dollars. The license shall be valid for the calendar year in which issued, and upon payment of a renewal fee of one dollar fifty cents shall be renewed for each year in which the tester desires to operate. A license not renewed prior to February 1 is void.

C. A certificate of proficiency may be obtained only from the department of dairy husbandry of the university of Arizona. The applicant therefor shall appear before the department of dairy husbandry or an official representative thereof and submit to such written examination and conduct such demonstration of laboratory technique as the department of dairy husbandry or its representative may require. Upon successfully completing the examination the department of dairy husbandry shall issue the certificate to an applicant displaying required proficiency. A tester's license issued by a state other than this state shall be accepted from the person named thereon in lieu of the certificate of proficiency, but the tester shall have been actively engaged in testing under the license for a period of not less than ninety days and shall furnish proof thereof. Each license shall be kept at the place in which the licensee is employed and shall be open to inspection.

D. A license may be revoked by the associate director, after a hearing upon due notice to the licensee, for a false statement in the application, dishonesty, incompetency or inaccuracy, or for violating any provision of this article. On request, the director shall review any action taken by the associate director under this subsection.

3-1337. Service charge and inspection fee; self-inspection

A. Livestock officers and inspectors shall collect from the person in charge of cattle inspected a service charge of three dollars plus an inspection fee of twenty-five cents per head for making inspections for the transfer of ownership, sale, slaughter or transportation of cattle.

B. Livestock officers and inspectors shall collect from the person in charge of sheep inspected a service charge of three dollars plus an inspection fee of five cents per head for making inspections for the transfer of ownership, sale, slaughter or transportation of sheep.

C. Livestock officers and inspectors shall collect from the person in charge of dairy cattle inspected a service charge of three dollars plus an inspection fee of twenty-five cents per head for making inspections for the transfer of ownership, sale, slaughter or transportation of dairy cattle.

D. The division may approve self-inspection by movers of livestock and feedlots and dairies pursuant to section 3-1203, subsection D. Movement shall be documented on simple and concise self-inspection forms that are provided by the department and that include only the following information:

1. The certificate number.

2. The department contact information.

3. For out-of-state shipments, official identification.

4. For dairy cattle, back tag numbers.

5. The amount collected pursuant to section 3-1236.

6. The number and description of livestock.

7. The livestock owner's or agent's name, signature and address.

8. The transporter's name.

9. The location of the place and date of shipment.

10. The destination or buyer's name and address.

11. For branded animals, the animal's registered brand, including brand number, location and expiration date.

E. Movers of livestock and feedlots and dairies that utilize self-inspection shall purchase the self-inspection book from the department. The director, in consultation with the department of agriculture advisory council established pursuant to section 3-104, may establish a fee for the self-inspection book.

F. Any fees collected by the livestock officers and inspectors and by movers of livestock and feedlots and dairies utilizing self-inspection shall be remitted to the division. Any fees incurred by movers of livestock and feedlots and dairies shall be remitted to the department within ten days after the end of the month in which the livestock were inspected.

3-2003. Grant of licenses; fees; expiration date

A. The division may grant a license to slaughter livestock, sheep, goats or swine as set forth in the license issued on payment of the fees.

B. The fees shall be as follows:

1. For not to exceed forty-five head of livestock, and not to exceed fifty-five head of sheep, goats or swine in one calendar year, $5.

2. For more than forty-five and not to exceed one hundred fifty head of livestock and more than forty-five and not to exceed one hundred sixty head of sheep, goats or swine in one calendar year, $15.

3. For more than one hundred fifty head of livestock and more than one hundred sixty head of sheep, goats or swine in any one calendar year, $80.

C. Licenses issued under this section expire on December 31 of the year in which they are issued.

3-2081. Licenses for sale or exchange of meat or poultry; fee; records kept by licensee; expiration of license; violation; classification

A. A person, firm or corporation that engages in the business of meat or poultry processing, wholesaling, storing in or for intrastate commerce, transporting in intrastate commerce, distributing, jobbing or brokering other than canned meat or poultry or canned meat or poultry products, except a home consumer, shall, before offering such meat or poultry or meat or poultry food products for sale or exchange, after complying with the minimum requirements of the director, procure a license from the division, for which he shall pay an annual license fee of ten dollars for each place of business, store, stand, market or vehicle in or from which the meat is to be sold or exchanged and shall keep a record of the name and address of each person from whom the licensee obtained such meat or meat food products, the date of purchase, quantity and kind of meat purchased and time and place of purchase. Upon request by an inspector or peace officer, the licensee shall exhibit the record to him. The record shall be retained for one year.

B. All licenses issued under the provisions of this article shall expire on December 31 of the year in which issued.

C. The following persons, firms and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses and all persons, firms and corporations subject to such requirements shall at all reasonable times upon notice by a duly authorized representative of the department afford such representative access to their places of business and opportunity to examine the facilities and inventory and to take reasonable samples of their inventory upon payment of the fair market value:

1. Any persons, firms or corporations that engage in the business of slaughtering any cattle, sheep, swine, goats, horses, mules or other equines or preparing, freezing, packaging or labeling any carcasses or parts or products of carcasses of any such animals for use as human food or animal food.

2. Any persons, firms or corporations that engage in the business of buying or selling as meat brokers, wholesalers or otherwise or transporting or storing or importing any carcasses or parts or products of carcasses of any such animals.

3. Any persons, firms or corporations that engage in business as renderers or engage in the business of buying, selling, transporting or importing any dead, dying, disabled or diseased cattle, sheep, swine, goats, horses, mules or other equines or parts of the carcasses of any such animals that died otherwise than by slaughter.

D. Any record required to be maintained by this section shall be maintained for such period of time as the director may by rules prescribe.

E. A person violating any provision of this section is guilty of a class 2 misdemeanor.

ARIZONA DEPARTMENT OF AGRICULTURE
ONE-YEAR RULE REVIEW REPORT
FEE COMPARISON - 3 A.A.C. 2

Greetings Council Member Spector,

The team at AZDA has compiled some information regarding how our fees for meat processing, livestock inspection, and dairy licensing compare to other states per your request during the review of the agency's One-Year Rule Review Report at the August 29, 2023 Study Session. It would take some time to do a complete comparative analysis, but we believe the information included here should shed some light on our program fees. We hope you find this information useful and if you have any additional questions, please let us know.

Meat Processing - R3-3-203

Each state is different in how they charge for inspections and the amount of funds each state contributes to their agriculture programs. California, Nevada, New Mexico, Colorado, Idaho, Washington, and Nebraska do not have a state meat inspection program, so no data is available. These are under a federal inspection program. Our nearest neighbors with programs are Wyoming and Utah. These states charge $200 and $150 per year, respectively. Due to the inspection costs incurred, all 29 states with state meat inspection programs would like to charge more than they are currently charging. To compare our fees to the cost for retail meat stores, Maricopa county charges over $600 a year per store which they visit 4 times a year. We visit every establishment each day they operate, which could be as much as 260 times a year for $300. This breaks down to $1.15 per inspection which in no way offsets the state's cost to provide our service which allows them to sell their products or services. It is federally mandated that an official inspector performs an on-site inspection each day the processing facility is in operation.

To obtain or renew a license to slaughter in Arizona:

- Not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: $250.
- For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: $300.
- For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: $450.

To obtain or renew a meat license in Arizona:

- For a broker, $450.
- For exempt processing, $300.
- For a distributor, $500 for a large distributor (more than $100,000 in sales per calendar year) and $150 for a small distributor (not to exceed $100,000 in sales per calendar year).
- For a jobber, $450.
- For a pet food manufacturer, $300.
- For a processor, $300.
- For meat storage, $450.
- For transportation, $300.

Dairy - R3-2-810.

Fees for dairy production vary greatly between the states. In addition to various licensing fees; several states charge assessment fees based on production volume of the processing plant. In Arizona, only dairy processors pay a fee for their licenses; the size of the plant is also considered

by charging per pasteurizer. It is hard to do an accurate comparative analysis compared to other states.

For example:

- New Mexico does not charge any fees for the production and processing of their dairy products.
- Nevada charges fees that range from $75 for the producer (Dairy farm) to $500 for a processing plant. In addition to the licensing fee Nevada charges an assessment fee of $0.0004 to $0.01 per pound based on how much product a processing plant produces.
- California's licensing/permit fees are $100 and are assessed to the plant, each individual equipment, milk tankers, and pasteurizer operators. CA also charges an assessment fee based on production volume. For an initial plant start up the plant is billed for the cost of plant review and initial inspections this start up cost could be several thousands.

To obtain or renew a dairy license in Arizona.

- For a license to operate a milk distributing plant or business: $300 plus $2,500 per pasteurizer.
- For a license to operate a manufacturing milk processing plant: $100.
- For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: $150 plus $2,500 per pasteurizer.
- For a license to engage in the business of producer-distributor: $150.
- For a license to engage in the business of producer-manufacturer: $25.
- For a license to engage in the manufacture of trade products: $100.
- For a license to engage in the business of selling at wholesale milk or dairy products, or both: $100.
- For a license to sample milk or cream: an initial fee of $50 and a renewal fee of $30.

Livestock Inspection - R3-2-701

It is difficult to do an accurate comparative analysis of fees for livestock inspection for neighboring states. Most programs are funded differently from state to state and there may be other funding sources provided to these programs that are not apparent. The funding generated from the fees in Arizona only partially fund the entirety of the program. Without the fees, resources would be reduced and the Department would have no choice but to limit the amount of time allocated to these programs. This would significantly impact commerce. Here are the fees that some neighboring states are required to pay for livestock inspection.

California -
Per head fee for inspection, all inspections are $ 1.40 with the following exceptions:

- $.65 California cattle into registered feedlot, from a Feedlot to out-of-state sale, from a Feedlot to out-of-state pasture movement.
- $.40 Out-of-state cattle and cattle from a California saleyard shipped direct to a registered feedlot.
- $.60 Saleyard re-inspection.
- $1.90 Hide Inspections.
- $1.00 California Beef Council on change of ownership.

- $1.00 California Cattle Council on change of ownership

The Fee per site is:

- $25.00 - 29 head or less
- $15.00 - 30 head or more

Nevada -

Cattle

- $10.00 for the 1st animal, $1.00 each additional.
- $1.00 per head for Beef Promotion, if applicable.

Horses

- $10.00 1st horse, $3.00 each additional
- $25.00 Annual Transportation Permit
- $50.00 Lifetime Transportation Permit

Livestock Movement Permit

- $25.00 per year
    - Time - $16.00 per hour
    - Mileage - $ .555 per mile

Special Sales

- Regular fees plus time and mileage
- Holidays and less than 24 hour notice
- Regular fees plus time and mileage

New Mexico -

Service charge for one-way movement field inspections and animal hide inspections

- 1 head and up is $10.00 per certificate/per species in addition to fees below for each species:

    *Cattle & Bison $ 0.50 per head
    *Equine $ 0.50 per head
    *Hides $ 0.50 per hide
    *Sheep & Goat $ 0.16 per head
    *Pelts $ 0.12 per head

- Permanent equine hauling card
    - $35.00 ($ 25.00 permit + $ 10.00 service charge)
- Annual equine permit hauling card with two transfers of ownership
    - $25.00 ($ 15 permit + $ 10.00 service charge)

Utah -

Brand inspection fees, per head of livestock.

- Brand inspection, $1.00
- Beef promotion (cattle only), $1.50
- Predator (cattle only), 0.25
- Annual Permit for multiple trips out-of-state, $25
- Minimum charge per certificate, $20

Change of ownership (In-state or Out-of-State)

- Brand inspection fees, plus $2.75 per head inspected

No change of ownership, shipped out-of-state

- $1.00 per head inspected

The inspection fees in Arizona for the inspection of livestock that will be moved out-of-state, transferred to another owner, or shipped for slaughter is $10, plus the per head inspection fee of:

- $0.25 per head of cattle
- $0.05 per head of sheep
- $0.05 per head of dairy cattle

ARIZONA DEPARTMENT OF AGRICULTURE
Title 3, Chapter 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: **Sep 6, 2023**

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

FROM: Council Staff

DATE: **July 27, 2023**

SUBJECT: **ARIZONA DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 4

Summary

This One Year Review Report from the Department of Agriculture relates to one (1) rule in Title 3, Chapter 4: R3-4-301, Nursery Certification.

Laws 2022, 2nd Reg. Sess., Ch. 312, § 9 authorizes the Department to temporarily increase the fee for general nursery stock certification. Every year since 2011, the legislature appropriates general funds to the Department based on projected revenues from these fees and advances to the Department the funds anticipated to be collected during the year. This is done to support the functions of the Department and to provide the mandated oversight of these operations, including inspections of these facilities. When these fees are collected, they are returned to the general fund.

Proposed Action

The Department will submit a request to the Governor's Office in July 2023 to continue these fees under an exempt rulemaking for fiscal year 2024.

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 rule was adopted by exempt rulemaking and a formal economic, small business, and consumer impact statement was not prepared. Stakeholders include the Department and Arizona nursery stock producers/exporters that participate in the voluntary Arizona Certified Nursery Program to receive a General Nursery Stock Certification that meets or exceeds the National Plant Board standards of pest freedom and generally satisfies most domestic entry requirements.

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 R3-4-301 outweighs the costs imposed by the regulatory community and are the least burdensome and cost effective.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Department states 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 the rules are clear, concise, and understandable.

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

The Department states the rules are consistent with other rules and statutes.

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

The Department states the rules are effective in achieving their objectives.

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

The Department states the rules are enforced as written.

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

The Department states the rules are not more stringent than corresponding federal law because there is no corresponding federal law.

10. Has the agency completed any additional process required by law?

The Department indicates there are no additional processes required by law.

11. 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 a permit or license is not required for this rule.

12. Conclusion

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1095. As indicated above, the Department received a one-time exemption from the rulemaking requirements to adopt rules necessary to temporarily increase the fee for general nursery stock certification. The Department intends to seek approval to submit another exempt rulemaking to continue these fee increases and Council staff recommends approval of this report.

KATIE HOBBS
Governor

JEFF GRANT
Interim Director

Arizona Department of Agriculture

Physical Address: 1110 W. Washington Street, Suite 450 Phoenix, AZ 85007
Mailing Address: 1802 W. Jackson Street, #78 Phoenix, AZ 85007

June 21, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: One-Year Review Report for A.A.C. Title 3, Chapter 4, R3-4-301

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's (Department) one-year review report for A.A.C. Title 3, Chapter 4, R3-4-301 which is due August 11, 2023. This rule has been reviewed, and there is no intention for this rule to expire under § 41-1056(J). However, this rule sets fees for fiscal year 2023. The Department intends to file an exempt rulemaking in accordance with Laws 2023, 1st Reg. Sess., Ch. 138, 9 in order to continue these fees in fiscal year 2024. Also enclosed are copies of the 2022 session law, rule and the authorizing statutes.

The Department certifies, in accordance with A.R.S. § 41-1056(A), that it is in compliance with A.R.S. § 41-1091.

Please contact Jack Peterson at (602) 542-3575 or jpeterson@azda.gov with any questions about this report.

Sincerely,

Jeff Grant
Interim Director

Enclosures:
One-Year Review Report
2022 Session Law
Current Rule
Authorizing Statutes

ARIZONA DEPARTMENT OF AGRICULTURE

1 YEAR REVIEW REPORT

Title 3, Chapter 4, Article 3

Due Date: August 11, 2023

Submitted: June 21, 2023

1. Authorization of the rule by existing statutes

Authorizing Statute: A.R.S. § 3-107(A)(1); Laws 2022, 2nd Reg. Sess., Ch. 312, § 9.

Implementing Statute: Laws 2022, 2nd Reg. Sess., Ch. 312, § 9; A.R.S. § § 3-201.01 (A)(5); 3-217.

Statute or session law authorizing the exemption: Laws 2022, 2nd Reg. Sess., Ch. 312, § 9.

2. The objective of each rule:

Rule	Objective
R3-4-301	Sets out temporary fee increases as authorized by 2022 session law for the nursery certification program, which includes general and special nursery stock inspection certifications and fees.

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

R3-4-301 is effective in achieving its objective.

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

R3-4-301 is consistent with other rules and statutes.

List of rules and statutes used in determining consistency:
A.R.S. § 3-201 et seq.

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

R3-4-301 is enforced as written.

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

R3-4-301 is clear, concise and understandable.

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

The Department has not received written criticisms of the rule within the last five years.

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

Because this rule was adopted by exempt rulemaking, a formal economic, small business, and consumer impact comparison was not prepared.

Many Arizona nursery stock producers/exporters participate in the voluntary Arizona Certified Nursery Program to receive a General Nursery Stock Certification that meets or exceeds the National Plant Board standards of pest freedom and generally satisfies most domestic entry requirements. Beginning in fiscal year (FY) 2011, the Legislature authorized the Department to increase the fee for general nursery stock certification (A.R.S. § 3-217) from $50 to $250 and increase the single shipment certification fee from $50 to $50 plus $10 for each additional lot inspected. The fee increases were implemented through legislation that allowed for a one year increase in fees in order to make up for decreases in general fund appropriations. The Department receives approximately $26,000 per year as a result of these fee increases. The revenue generated is used to offset the cost of providing the inspection service to the regulated community. Without the income generated, the Department would not be able to provide these services and the regulated community would not be able to export regulated nursery products out of the state, decreasing the overall impact to the State's economy. The rule does not directly affect employment, consumers or state revenues.

Each year, since that time, similar legislation has passed allowing the Department to keep up these fee increases for one more year at a time. The current fee increase will end at the end of the fiscal year. Laws 2023, 1st Reg. Sess., Ch. 138, **§** 9 authorizes these fees to continue in FY 2024. The Department will be filing an exempt rulemaking with the Secretary of State's Office to continue these fees in FY 2024.

9. **Has the agency received any business competitiveness analyses of the rules? Yes____No x___**

No business competitive analysis has been received.

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

There is not a previous one-year review report because R3-4-301 became effective September 24, 2022.

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

The Department believes R3-4-301 outweighs the costs imposed by the regulatory community, and are the least burdensome and cost effective.

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

R3-4-301 has no corresponding federal law and is therefore 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:

R3-4-301 does not require a permit. The nursery certification program is voluntary.

14. Proposed course of action

The Department proposes to maintain the rule as is. The Department proposes to maintain the rule as is. The Department intends to submit a request to the Governor's Office Policy Advisor in July, 2023 to request approval to conduct rulemaking for rule R3-4-301 pursuant to A.R.S. § 41-1039(A). Within 30-days of receiving approval to proceed with rulemaking from the Governor's Office Policy Advisor, the Department will file an exempt rulemaking with the Secretary of State's Office in accordance with Laws 2023, 1st Reg. Sess., Ch. 138, § 9 to continue nursery certification fees from fiscal year 2023 to fiscal year 2024 for services provided in fiscal year 2024.

Historical Note
New Table 4, Class A Noxious Weeds made by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

Table 5. Class B Noxious Weeds

Common name	Scientific name
Black mustard	*Brassica nigra*
Branched broomrape	*Orobanche ramosa*
Bull thistle	*Cirsium vulgare*
Camelthorn	*Alhagi maurorum (A. pseudalhagi)*
Dalmatian toadflax	*Linaria dalmatica (L genistifolia v. dalmatica)*
Diffuse knapweed	*Centaurea diffusa*
Field sandbur	*Cenchrus spinifex (synonym: C. incertus)*
Giant reed	*Arundo donax*
Halogeton	*Halogeton glomeratus*
Jointed goatgrass	*Aegilops cylindrica*
Malta starthistle	*Centaurea melitensis*
Musk thistle	*Carduus nutans*
Natal grass	*Melinis repens*
Onionweed	*Asphodelus fistulosus*
Russian knapweed	*Acroptilon repens*
Russian olive	*Elaeagnus angustifolia*
Saharan mustard	*Brassica tournefortii*
Stinknet (Globe chamomile)	*Oncosiphon piluliferum*
Scotch thistle	*Onopordum acanthium*
Yellow bluestem	*Bothriochloa ischaemum*
Yellow starthistle	*Centaurea solstitialis*

Historical Note
New Table 5, Class B Noxious Weeds made by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

Table 6. Class C Noxious Weeds

Common name	Scientific name
Buffelgrass	*Cenchrus ciliaris (Pennisetum ciliare)*
Field bindweed	*Convolvulus arvensis*
Fountain grass	*Pennisetum setaceum*
Garden or common morning glory	*Ipomoea purpurea*
Grannyvine	*Ipomoea tricolor*
Ivy-leaf morning glory	*Ipomoea hederacea*
Johnsongrass	*Sorghum halepense*
Kochia	*Kochia scoparia*
Morning glory	*Ipomoea triloba*
Morning glory	*Ipomoea x leucantha*
Puncturevine	*Tribulus terrestris*
Salt cedar	*Tamarix ramosissima*
Tree of heaven	*Ailanthus altissima*

Historical Note
New Table 6, Class C Noxious Weeds made by final rulemaking at 25 A.A.R. 3357, effective January 4, 2020 (Supp. 19-4).

ARTICLE 3. NURSERY CERTIFICATION PROGRAM

R3-4-301. Nursery Certification

A. Definitions. The following terms apply to this Section.

"Associate Director" means the Associate Director of the Arizona Department of Agriculture's Plant Services Division.

"Certificate" means a document issued by the Director, Associate Director or by a Department inspector stating that the nursery stock has been inspected and complies with the criteria set forth by an agricultural agency of any state, county, or commonwealth.

"Certificate holder" means a person who holds a certificate issued in accordance with this Section.

"Collected nursery stock" means nursery stock that has been dug or gathered from any site other than a nursery location.

"Commercially clean" means nursery stock offered for sale is in a healthy condition and, though common pests may be present, they exist at levels that pose little or no risk.

"Common pest" means a pest, weed, or disease that is not under a state or federal quarantine or eradication program and is of general distribution within the state.

"Director" means the Director of the Arizona Department of Agriculture.

"General nursery stock inspection certification" means an inspection carried out at the request of a person for the purpose of meeting the general nursery inspection requirements of another state.

"Nursery location" means real property with one physical address, upon which nursery stock is propagated, grown, sold, distributed, or offered for sale.

"Quarantine pest" means an economically important pest that does not occur in the state or that occurs in the state but is not widely distributed or is being officially eradicated.

"Single shipment nursery stock inspection certification" means a visit to a single location by a Department inspector to certify one or more shipments of nursery stock for compliance with the quarantine requirements of the receiving state, county, or commonwealth.

B. General nursery stock inspection certification. A person may apply for general nursery stock inspection certification by submitting to the Department the application described in subsection (E) for each nursery location. The applicant shall submit a $50 inspection fee to the Department at the time of inspection for each nursery location. Each nursery location shall be inspected and certified separately. An application for initial certification may be submitted at any time. A certificate will be valid for one year, and may be renewed. A renewal application shall be submitted each year by February 15.

1. The Department shall issue a general nursery stock inspection certificate to the applicant if, following a Department inspection, the nursery stock is found free of quarantine pests, and commercially clean of common pests that are adversely affecting the nursery stock.

a. The Department shall only certify nursery stock that is found free of quarantine pests. The applicant shall not remove from the nursery any nursery stock that is found infested with a quarantine pest until a Department inspector determines that the pest has been eliminated.
b. The Department shall restrict the movement of any nursery stock found infested with a common pest that a Department inspector determines is adversely affecting the nursery stock. The applicant shall establish a treatment program to control the pest and shall not remove the infested nursery stock from the nursery until a Department inspector determines that the pest has been controlled.

2. A certificate holder shall ensure that a nursery with a general nursery stock inspection certificate remains free of quarantine pests and commercially clean of common pests that are adversely affecting the nursery stock throughout the period that the certificate is valid.
3. A certificate holder shall not distribute, transport, or sell nursery stock interstate if it is infested with a quarantine pest or a common pest that is adversely affecting the nursery stock.
4. A certificate holder may reproduce a general nursery stock inspection certificate without the Department's permission for nursery use.
5. A certificate holder shall ensure that the nursery's general nursery stock inspection certificate accompanies each shipment of nursery stock that is moved out of the state.
6. A certificate holder shall maintain all invoices or other shipping documents for shipments received by and shipped from the nursery for up to one year. The certificate holder shall make the documents available to the Department upon request, as authorized by A.R.S. § 3-201.01(A)(6).
7. The Department shall inspect a nursery with a general nursery stock inspection certificate at any time during the certificate period to verify compliance with this Section.
8. A general nursery stock inspection certificate expires on December 31 of each year unless renewed, suspended, or revoked as provided in this Section.
9. A person with a general nursery stock inspection certificate may also need to obtain a special nursery stock inspection certificate to meet a specific quarantine entry requirement of another state, as prescribed in subsection (C).

C. Special nursery stock inspection certification. A person may apply for special nursery stock inspection certification to meet specific quarantine entry requirements of another state that are not addressed by the general nursery stock inspection certificate described in subsection (B). The applicant shall submit to the Department the application described in subsection (E) and a $50 inspection fee for each nursery location.

1. An applicant shall ensure that the applicant's nursery stock is free of quarantine pests as required by the receiving state and commercially clean of common pests that are adversely affecting the nursery stock. The Department shall not certify nursery stock that is infested with a quarantine pest until a Department inspector determines that the pest has been eliminated. The Department shall not certify nursery stock that is infested with a common pest that a Department inspector determines is adversely affecting the nursery stock.
2. A certificate holder shall not reproduce or duplicate a special nursery stock inspection certificate without written permission from the Department.
3. A special nursery stock inspection certificate is valid for one year from the issue date unless the receiving state requires a shorter certification period.

D. Single shipment nursery stock inspection certification. A person may apply for a single shipment nursery stock inspection certification to meet the entry requirements of another state by submitting to the Department the application described in subsection (E) with a $50 inspection fee.

1. An applicant for a single shipment nursery stock inspection certificate shall ensure that the nursery stock in each shipment is free from quarantine pests, as required by the receiving state, and commercially clean of common pests that are adversely affecting the nursery stock. The Department shall not certify nursery stock that is infested with a quarantine pest until a Department inspector determines that the pest has been eliminated. The Department shall not certify nursery stock that is infested with a common pest that a Department inspector determines is adversely affecting the nursery stock until the pest has been controlled.
2. A single shipment nursery stock inspection certificate is valid for seven calendar days following the inspection date. A certificate holder may apply for a new certificate if the original certificate expires before the shipment leaves Arizona.
3. A certificate holder shall not reproduce or duplicate a single shipment nursery stock inspection certificate.
4. A person who has obtained a single shipment nursery stock inspection certificate for collected nursery stock shall retain a record, for at least one year from the shipment date, of the street address from which each plant in a shipment was collected. The person shall provide the collected nursery stock record to the Department upon request.

E. Application. A person applying for a certificate under this Section shall provide the following information on a form obtained from the Department:

1. Applicant's name, nursery name, mailing address, telephone and fax numbers, and e-mail address, as applicable;
2. Location at which inspection is to be made, by legal description or physical address;
3. Number of acres, structures, or vehicles to be inspected, as applicable;
4. For shipping, the state, county, or commonwealth of planned destination, the category of inspection, and the nursery stock to be certified;
5. Applicant's Social Security number or tax identification number; and
6. Applicant's signature and date of signature.

F. Based upon the circumstances of each case, the Associate Director may:

1. Refuse to issue a certificate if, after inspection, the Associate Director determines that an applicant has not met a requirement for certification.
2. Revoke a certificate for a violation of a condition of the certificate.
3. Suspend, for a period of up to 90 days, a certificate for misuse or misrepresentation related to the certificate.
4. Refuse to issue or suspend a certificate issued under this Section if the applicant or certificate holder refuses to

provide the Department with documents that demonstrate the ownership, origin, or destination of nursery stock presented for certification.

G. Nothwithstanding subsections (B) through (D), during fiscal year 2023, an applicant for nursery stock inspection certification shall pay the following fee:
1. For general certification, $250.
2. For single shipment certification, $50 for the first lot plus $10 for each additional lot per Department site trip.

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-301 renumbered from R3-1-301 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2). Amended by exempt rulemaking at 16 A.A.R. 1336, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1761, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2063, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3143, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2454, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking at 21 A.A.R. 2410, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1941, effective August 8, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2223, effective August 3, 2018 (Supp. 18-2). Amended by final exempt rulemaking at 25 A.A.R. 2085, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1473, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1266, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2020 (August 12, 2022), effective September 24, 2022 (Supp. 22-3).

R3-4-302. Repealed

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-302 renumbered from R3-1-301 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-303. Repealed

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-303 renumbered from R3-1-303 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-304. Repealed

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-304 renumbered from R3-1-304 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-305. Repealed

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-305 renumbered from R3-1-305 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-306. Repealed

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-306 renumbered from R3-1-306 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

R3-4-307. Repealed

Historical Note
Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-307 renumbered from R3-1-307 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

ARTICLE 4. SEEDS

R3-4-401. Definitions
In addition to the definitions provided in A.R.S. § 3-231, the following shall apply to this Article:
1. "Blend" means seed consisting of more than one variety of a kind, with each variety in excess of five percent by weight of the whole.
2. "Brand" means a word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person.
3. "Certifying agency" means:
   a. An agency authorized under the laws of this state to officially certify seed and that has standards and procedures approved by the U.S. Secretary of Agriculture to assure the varietal purity and identity of the seed certified, or
   b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to the procedures and standards adhered to generally by seed-certifying agencies under subsection (a) of this definition.
4. "Coated seed" means seed that has been covered with a substance that changes the size, shape, or weight of the original seed. Seed coated with ingredients such as rhizobia, dyes, and pesticides is not coated seed.
5. "Conditioning" or "conditioned" means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.
6. "Dormant" means viable seed, excluding hard seed, that fails to germinate when provided the specified germination conditions for that kind of seed.
7. "Federal Seed Act" means the federal law at 7 U.S.C. 1551-1611 and regulations promulgated under the Act: 20 CFR part 201.
8. "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seeds in this state.
9. "Germination" means the emergence and development from the seed embryo of those essential structures that, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.
10. "Hard seeds" means seeds that remain hard at the end of the prescribed germination test period because they have not absorbed water due to an impermeable seed coat.

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 312

HOUSE BILL 2861

AN ACT

AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1510; AMENDING SECTION 49-210, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-211; APPROPRIATING MONIES; RELATING TO THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 41, chapter 10, article 1, Arizona Revised Statutes, is amended by adding section 41-1510, to read:

41-1510. Water infrastructure and commerce grant fund

A. THE WATER INFRASTRUCTURE AND COMMERCE GRANT FUND IS ESTABLISHED CONSISTING OF LEGISLATIVE APPROPRIATIONS, FEDERAL MONIES AND PRIVATE DONATIONS. THE CHIEF EXECUTIVE OFFICER SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. MONIES IN THE FUND MAY BE USED TO PROVIDE GRANTS TO ELIGIBLE ENTITIES FOR CONTRACTING FOR THE DESIGN AND CONSTRUCTION OF WATER INFRASTRUCTURE AT THE ELIGIBLE ENTITY'S LOCATION. THE AUTHORITY MAY RETAIN UP TO ONE PERCENT OF THE MONIES IN THE FUND ANNUALLY TO ADMINISTER THE FUND.

B. THE FOLLOWING ENTITIES ARE ELIGIBLE TO APPLY FOR AND RECEIVE GRANT MONIES PURSUANT TO THIS SECTION:

1. A PUBLIC SERVICE CORPORATION THAT PROVIDES WATER SERVICE PURSUANT TO A CERTIFICATE OF CONVENIENCE AND NECESSITY ISSUED BY THE CORPORATION COMMISSION AND THAT IS ACTING ON BEHALF OF AN EMPLOYER PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION.

2. AN EMPLOYER WITH MORE THAN TWO HUNDRED FIFTY EMPLOYEES THAT IS LOCATED IN A COUNTY WITH A POPULATION OF MORE THAN FOUR HUNDRED THOUSAND PERSONS AND LESS THAN ONE MILLION PERSONS.

C. THE AUTHORITY SHALL:

1. PRESCRIBE A SIMPLIFIED FORM AND PROCEDURE TO APPLY FOR AND APPROVE GRANTS.

2. ESTABLISH REQUIREMENTS AND CRITERIA BY WHICH GRANTS WILL BE AWARDED, WHICH SHALL INCLUDE AT LEAST THE FOLLOWING:

(a) GRANTS TO ELIGIBLE APPLICANTS ONLY FOR NEW WATER INFRASTRUCTURE PROJECTS THAT ARE LOCATED AT THE ELIGIBLE APPLICANT'S PROPERTY IN A COUNTY WITH A POPULATION OF MORE THAN FOUR HUNDRED THOUSAND PERSONS AND LESS THAN ONE MILLION PERSONS.

(b) GRANTS FOR PROJECTS THAT CREATE NEW JOBS.

(c) GRANTS FOR PROJECTS THAT BEGIN AFTER JANUARY 1, 2022.

(d) GRANTS THAT ARE ALLOCATED AND DISTRIBUTED NOT LATER THAN DECEMBER 31, 2024.

(e) APPLICANTS MAY RECEIVE MORE FAVORABLE CONSIDERATION FOR GRANT MONIES IF THE APPLICANT INCLUDES COLLABORATION AND COOPERATION WITH OTHER MEMBERS AND ENTITIES IN THE COMMUNITY.

(f) APPLICANTS SHALL CERTIFY THAT THEY ARE ELIGIBLE TO RECEIVE GRANT MONIES, SHALL DESCRIBE THE PROJECT AND SERVICES REQUESTED AND WHY THE PROJECT AND SERVICES ARE NEEDED AND SHALL CERTIFY THAT ALL GRANT MONIES WILL BE USED IN COMPLIANCE WITH THIS SECTION, THE AUTHORITY'S REQUIREMENTS, THE APPLICATION REQUIREMENTS AND PROCESSES AND OTHERWISE APPLICABLE LAW.

D. BEFORE AWARDING A GRANT PURSUANT TO THIS SECTION, THE AUTHORITY SHALL PREPARE A WRITTEN STATEMENT THAT IS SIGNED BY THE CHIEF EXECUTIVE OFFICER, THAT ASSESSES THE DIRECT ECONOMIC IMPACT OF THE GRANT, INCLUDING THE NUMBER OF NEW JOBS THAT WILL BE CREATED, AND THAT CONTAINS A FINDING THAT THE AWARD OF GRANT MONIES IS IN THE BEST INTEREST OF THIS STATE.

E. ON OR BEFORE DECEMBER 15 OF EACH YEAR, THE AUTHORITY SHALL SUBMIT AN ANNUAL REPORT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE. THE REPORT SHALL INCLUDE, AT A MINIMUM, THE AMOUNT OF ACTUAL EXPENDITURES FROM THE FUND BY PROJECT AND AN EXPENDITURE PLAN FOR ALL REMAINING MONIES BY PROJECT.

Sec. 2. Section 49-210, Arizona Revised Statutes, is amended to read:

49-210. Water quality fee fund; appropriation; exemption; monies held in trust

A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-211, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.

B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

D. Monies in the water quality fee fund shall be used for the following purposes:

1. To issue aquifer protection permits pursuant to section 49-241.

2. The aquifer protection permit registration fee procedures pursuant to section 49-242.

3. Dry well registration fee procedures pursuant to section 49-332.

4. Technical review fee procedures pursuant to section 49-353.

5. Inspection fee procedures pursuant to section 49-104, subsection C.

6. To issue permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.

7. Operator certification pursuant to sections 49-352 and 49-361.

8. Paying the cost of implementing section 49-203, subsection A, paragraph 7 and section 49-221, subsection E.

9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.

10. To implement and administer the underground injection control permit program established pursuant to article 3.3 of this chapter.

11. To implement and administer the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

Sec. 3. Title 49, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 49-211, to read:

49-211. Direct potable reuse of treated wastewater; fees; rules

A. ON OR BEFORE DECEMBER 31, 2024, THE DIRECTOR SHALL ESTABLISH BY RULE PERMIT FEES SUFFICIENT TO ADMINISTER A DIRECT POTABLE REUSE OF TREATED WASTEWATER 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. ON OR BEFORE DECEMBER 31, 2024, THE DIRECTOR SHALL ADOPT ALL RULES NECESSARY TO ESTABLISH AND IMPLEMENT A DIRECT POTABLE REUSE OF TREATED WASTEWATER PROGRAM, INCLUDING RULES ESTABLISHING PERMITTING STANDARDS AND A PERMIT APPLICATION PROCESS.

Sec. 4. Arizona water protection fund; use of monies

Notwithstanding section 45-2114, Arizona Revised Statutes, in fiscal year 2022-2023, the Arizona water protection fund commission may grant to the department of water resources up to $336,000 of the unobligated balance in the Arizona water protection fund established by section 45-2111, Arizona Revised Statutes, to pay for administrative costs of the department in fiscal year 2022-2023.

Sec. 5. Underground storage tank revolving fund; use of monies

Notwithstanding any other law, in fiscal year 2022-2023, the department of environmental quality may use up to $6,531,000 from the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, in fiscal year 2022-2023 for:

1. Administrative costs of the department.

2. Remediating sewage discharge issues in Naco, Arizona and other border areas of this state.

Sec. 6. Arizona water banking fund; use of monies

In addition to the purposes provided in section 45-2425, Arizona Revised Statutes, monies appropriated to the Arizona navigable stream adjudication commission from the Arizona water banking fund established by

section 45-2425, Arizona Revised Statutes, may be used in fiscal year 2022-2023 to pay legal fees.

Sec. 7. Appropriation limit; water quality assurance revolving fund

Notwithstanding section 49-282, Arizona Revised Statutes, the appropriation from the state general fund to the water quality assurance revolving fund established by section 49-282, Arizona Revised Statutes, for fiscal year 2022-2023 may not exceed $15,000,000.

Sec. 8. Department of environmental quality; vehicle emissions testing fees; exemption from rulemaking

A. Notwithstanding any other law, the director of environmental quality shall charge fees in fiscal year 2022-2023 that are not more than the fees that were charged in fiscal year 2021-2022 for tests conducted in Area A, as defined in section 49-541, Arizona Revised Statutes.

B. The department of environmental quality is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until July 1, 2023 for the purpose of establishing fees pursuant to this section.

Sec. 9. Agricultural fees; continuation; intent; rulemaking exemption

A. Notwithstanding any other law, the director of the Arizona department of agriculture, with the assistance of the department of agriculture advisory council, may continue, increase or lower existing fees from fiscal years 2020-2021 and 2021-2022 in fiscal year 2022-2023 for services provided in fiscal year 2022-2023.

B. The legislature intends that the additional revenue generated by the fees prescribed in subsection A of this section not exceed $218,000 to the state general fund, $113,000 to the pesticide trust fund established by section 3-350, Arizona Revised Statutes, and $26,000 to the dangerous plants, pests and diseases trust fund established by section 3-214.01, Arizona Revised Statutes, in fiscal year 2022-2023.

C. The Arizona department of agriculture is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until July 1, 2023 for the purpose of establishing fees pursuant to this section.

APPROVED BY THE GOVERNOR JUNE 28, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 28, 2022.

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.

2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.

3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.

5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.

7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.

8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.

9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.

10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-201.01. Associate director; powers and duties

A. The associate director may, as authorized by the director:

1. Quarantine, treat, eradicate, destroy or reject out of state pests and all plants that are infested or infected with pests or that are the host or carrier or the means of propagating or disseminating a pest.

2. Enforce all rules and orders necessary to carry out the purposes of this article:

(a) To prevent introduction of a pest into the state.

(b) To prevent propagation or dissemination of a pest from one locality to another in this state.

(c) To control, eradicate or suppress a pest or prevent introduction into this state of a pest from out of state.

(d) To fix the terms and conditions on which plants or any other article or thing of any nature whatever likely to be infested or infected with or be the carrier of, or the means of propagating or disseminating, a pest that may be shipped or brought into this state, or moved from one locality or place to another in this state.

(e) To prohibit plants or things likely to be infected with, be the carrier of or be the means of spreading, propagating or disseminating a pest from being shipped or brought into this state or moved from one locality to another in this state.

3. Cooperate with the United States secretary of agriculture and the secretary's representatives in interstate matters pertaining to the objects of this article.

4. Proceed according to law to abate any public nuisance prohibited by this article.

5. Establish fees pursuant to section 3-217 and adopt rules necessary to effect and administer an Arizona nursery certification program, for any person who requests to participate, to certify that a participating nursery meets the criteria established by the associate director or the entry criteria established by another state, commonwealth or country.

6. Require records to determine the origin and quarantine certification status of nursery stock sold, offered for sale or transported by any person into or within this state.

B. The associate director shall:

1. Keep the director informed concerning dangers to the agricultural and horticultural interests of this state from pests.

2. Faithfully enforce and execute all rules and orders of the department pertaining to the division, using all necessary and proper means including court action.

3. Prepare, publish electronically, post and make available at least once each year bulletins containing such information as the associate director deems proper and the current rules and orders of the department.

4. Enter in or on any premises or other place, train, vehicle or other means of transportation in or entering this state that is suspected of containing, harboring or having present one or more pests.

5. Make inspections to determine if a pest is present.

6. Open, without unnecessary injury to property, any box, container or package at any time during business or operating hours, and, after notifying the owner or person in charge, if the owner or person in charge is found in the county, open any car, enclosure or building that the associate director suspects contains, harbors or has present a pest, and examine and inspect the contents as may be necessary to determine if a pest is present.

7. If in performing other duties the associate director determines that plant materials inspected and being delivered or transported or shipped by mail or courier are dead, dying or otherwise inferior in quality, mark the plant or package, or both, advising the recipient and sender that, in the judgment of the associate director, the plant materials were found to be dead, dying or of inferior quality. This paragraph does not authorize the associate director to perform inspections solely for the purposes set forth in this paragraph.

3-217. Nursery or nursery stock certification; fee; denial, revocation or suspension; hearing

A. The associate director shall:

1. Establish a nursery certification program.

2. By rule, set and collect a variable fee for each nursery or nursery stock certification inspection based on a schedule of costs for services as may be appropriate to recover the actual direct costs incurred by the division, but not more than fifty dollars for each inspection.

B. If the state agricultural laboratory performs tests under a nursery certification program, the laboratory may collect fees prescribed by rule for the tests established as follows:

1. The associate director shall establish by rule the extent and type of testing required for the Arizona certified nursery program including only tests that the department would not otherwise have performed to determine if the nursery or nursery stock is infested or infected with a crop pest or disease.

2. The extent and type of testing required for the export criteria program shall be established according to the requirements of another state, country or commonwealth.

C. The associate director may issue, refuse to issue, revoke or suspend a nursery certificate under the nursery certification program.

D. A person who is aggrieved by any action under the nursery certification program may request a hearing pursuant to title 41, chapter 6, article 10.

ARIZONA DEPARTMENT OF AGRICULTURE
ONE-YEAR RULE REVIEW REPORT
FEE COMPARISON - 3 A.A.C. 2

Greetings Council Member Spector,

The team at AZDA has compiled some information regarding how our fees for meat processing, livestock inspection, and dairy licensing compare to other states per your request during the review of the agency's One-Year Rule Review Report at the August 29, 2023 Study Session. It would take some time to do a complete comparative analysis, but we believe the information included here should shed some light on our program fees. We hope you find this information useful and if you have any additional questions, please let us know.

Meat Processing - R3-3-203

Each state is different in how they charge for inspections and the amount of funds each state contributes to their agriculture programs. California, Nevada, New Mexico, Colorado, Idaho, Washington, and Nebraska do not have a state meat inspection program, so no data is available. These are under a federal inspection program. Our nearest neighbors with programs are Wyoming and Utah. These states charge $200 and $150 per year, respectively. Due to the inspection costs incurred, all 29 states with state meat inspection programs would like to charge more than they are currently charging. To compare our fees to the cost for retail meat stores, Maricopa county charges over $600 a year per store which they visit 4 times a year. We visit every establishment each day they operate, which could be as much as 260 times a year for $300. This breaks down to $1.15 per inspection which in no way offsets the state's cost to provide our service which allows them to sell their products or services. It is federally mandated that an official inspector performs an on-site inspection each day the processing facility is in operation.

To obtain or renew a license to slaughter in Arizona:

- Not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: $250.
- For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: $300.
- For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: $450.

To obtain or renew a meat license in Arizona:

- For a broker, $450.
- For exempt processing, $300.
- For a distributor, $500 for a large distributor (more than $100,000 in sales per calendar year) and $150 for a small distributor (not to exceed $100,000 in sales per calendar year).
- For a jobber, $450.
- For a pet food manufacturer, $300.
- For a processor, $300.
- For meat storage, $450.
- For transportation, $300.

Dairy - R3-2-810.

Fees for dairy production vary greatly between the states. In addition to various licensing fees; several states charge assessment fees based on production volume of the processing plant. In Arizona, only dairy processors pay a fee for their licenses; the size of the plant is also considered

by charging per pasteurizer. It is hard to do an accurate comparative analysis compared to other states.

For example:

- New Mexico does not charge any fees for the production and processing of their dairy products.
- Nevada charges fees that range from $75 for the producer (Dairy farm) to $500 for a processing plant. In addition to the licensing fee Nevada charges an assessment fee of $0.0004 to $0.01 per pound based on how much product a processing plant produces.
- California's licensing/permit fees are $100 and are assessed to the plant, each individual equipment, milk tankers, and pasteurizer operators. CA also charges an assessment fee based on production volume. For an initial plant start up the plant is billed for the cost of plant review and initial inspections this start up cost could be several thousands.

To obtain or renew a dairy license in Arizona.

- For a license to operate a milk distributing plant or business: $300 plus $2,500 per pasteurizer.
- For a license to operate a manufacturing milk processing plant: $100.
- For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: $150 plus $2,500 per pasteurizer.
- For a license to engage in the business of producer-distributor: $150.
- For a license to engage in the business of producer-manufacturer: $25.
- For a license to engage in the manufacture of trade products: $100.
- For a license to engage in the business of selling at wholesale milk or dairy products, or both: $100.
- For a license to sample milk or cream: an initial fee of $50 and a renewal fee of $30.

Livestock Inspection - R3-2-701

It is difficult to do an accurate comparative analysis of fees for livestock inspection for neighboring states. Most programs are funded differently from state to state and there may be other funding sources provided to these programs that are not apparent. The funding generated from the fees in Arizona only partially fund the entirety of the program. Without the fees, resources would be reduced and the Department would have no choice but to limit the amount of time allocated to these programs. This would significantly impact commerce. Here are the fees that some neighboring states are required to pay for livestock inspection.

California -
Per head fee for inspection, all inspections are $ 1.40 with the following exceptions:

- $.65 California cattle into registered feedlot, from a Feedlot to out-of-state sale, from a Feedlot to out-of-state pasture movement.
- $.40 Out-of-state cattle and cattle from a California saleyard shipped direct to a registered feedlot.
- $.60 Saleyard re-inspection.
- $1.90 Hide Inspections.
- $1.00 California Beef Council on change of ownership.

- $1.00 California Cattle Council on change of ownership

The Fee per site is:

- $25.00 - 29 head or less
- $15.00 - 30 head or more

Nevada -

Cattle

- $10.00 for the 1st animal, $1.00 each additional.
- $1.00 per head for Beef Promotion, if applicable.

Horses

- $10.00 1st horse, $3.00 each additional
- $25.00 Annual Transportation Permit
- $50.00 Lifetime Transportation Permit

Livestock Movement Permit

- $25.00 per year
    - Time - $16.00 per hour
    - Mileage - $ .555 per mile

Special Sales

- Regular fees plus time and mileage
- Holidays and less than 24 hour notice
- Regular fees plus time and mileage

New Mexico -

Service charge for one-way movement field inspections and animal hide inspections

- 1 head and up is $10.00 per certificate/per species in addition to fees below for each species:

    *Cattle & Bison $ 0.50 per head
    *Equine $ 0.50 per head
    *Hides $ 0.50 per hide
    *Sheep & Goat $ 0.16 per head
    *Pelts $ 0.12 per head

- Permanent equine hauling card
    - $35.00 ($ 25.00 permit + $ 10.00 service charge)
- Annual equine permit hauling card with two transfers of ownership
    - $25.00 ($ 15 permit + $ 10.00 service charge)

Utah -

Brand inspection fees, per head of livestock.

- Brand inspection, $1.00
- Beef promotion (cattle only), $1.50
- Predator (cattle only), 0.25
- Annual Permit for multiple trips out-of-state, $25
- Minimum charge per certificate, $20

Change of ownership (In-state or Out-of-State)

- Brand inspection fees, plus $2.75 per head inspected

No change of ownership, shipped out-of-state

- $1.00 per head inspected

The inspection fees in Arizona for the inspection of livestock that will be moved out-of-state, transferred to another owner, or shipped for slaughter is $10, plus the per head inspection fee of:

- $0.25 per head of cattle
- $0.05 per head of sheep
- $0.05 per head of dairy cattle

ARIZONA DEPARTMENT OF AGRICULTURE
Title 3, Chapter 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: **Sep 6, 2023**

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

FROM: Council Staff

DATE: **Jul 27, 2023**

SUBJECT: **ARIZONA DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 6

Summary

This One Year Review Report from the Department of Agriculture relates to one (1) rule in Title 3, Chapter 6: R3-6-102, Phytosanitary Certification.

Laws 2022, 2nd Reg. Sess., Ch. 312, § 9 authorizes the department to temporarily increase the fees for state phytosanitary certification. Every year since 2011, the legislature appropriates general funds to the Department based on projected revenues from these fees and advances to the Department the funds anticipated to be collected during the year. This is done to support the functions of the Department and to provide the mandated oversight of these operations, including inspections of these facilities. When these fees are collected, they are returned to the general fund.

Proposed Action

The Department plans on filing an exempt rulemaking to continue these fees. The intent of the Department is to submit a request to the Governor's Office in July 2023 to continue these fees under an exempt rulemaking for fiscal year 2024.

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:

Because the rule was adopted by exempt rulemaking, a formal economic impact comparison was never prepared. The rule allows the Department to increase and maintain fees that pay the administrative costs to produce certificates to shippers of plants and plant products who meet phytosanitary entry requirements. These services allow the regulated community to be able to export regulated plant products out of the state. Since fiscal year 2011, the fees have increased each year.

Stakeholders are identified as the Department, shippers of plants and plant products, and those seeking to meet phytosanitary entry requirements.

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 rule imposes the least burden and costs to persons regulated.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Department states 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 the rules are clear, concise, and understandable.

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

The Department states the rules are consistent with other rules and statutes.

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

The Department states the rules are effective in achieving their objectives.

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

The Department states the rules are enforced as written.

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

The Department states the rules are not more stringent than corresponding federal law.

10. Has the agency completed any additional process required by law?

The Department indicates there are no additional processes required by law.

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

The Department states the rules do not require a permit or license.

12. Conclusion

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1095. As indicated above, the Department received a one-time exemption from the rulemaking requirements to adopt rules necessary to temporarily increase the fee for state phytosanitary certification. The Department intends to seek approval to submit another exempt rulemaking to continue these fee increases and Council staff recommends approval of this report.

KATIE HOBBS
Governor

JEFF GRANT
Interim Director

Arizona Department of Agriculture

Physical Address: 1110 W. Washington Street, Suite 450 Phoenix, AZ 85007
Mailing Address: 1802 W. Jackson Street, #78 Phoenix, AZ 85007

June 21, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: One-Year Review Report for A.A.C. Title 3, Chapter 6, R3-6-102

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's (Department) one-year review report for A.A.C. Title 3, Chapter 6, R3-6-102 which is due August 11, 2023. This rule has been reviewed, and there is no intention for this rule to expire under § 41-1056(J). However, this rule sets fees for fiscal year 2023. The Department intends to file an exempt rulemaking in accordance with Laws 2023, 1st Reg. Sess., Ch. 138, 9 in order to continue these fees in fiscal year 2024. Also enclosed are copies of the 2022 session law, rule and the authorizing statutes.

The Department certifies, in accordance with A.R.S. § 41-1056(A), that it is in compliance with A.R.S. § 41-1091.

Please contact Jack Peterson at (602) 542-3575 or jpeterson@azda.gov with any questions about this report.

Sincerely,

Jeff Grant
Interim Director

Enclosures:
One-Year Review Report
2022 Session Law
Current Rule
Authorizing Statutes

ARIZONA DEPARTMENT OF AGRICULTURE

1 YEAR REVIEW REPORT

Title 3, Chapter 6

Due Date: August 11, 2023

Submitted: June 21, 2023

1. Authorization of the rule by existing statutes

Authorizing Statute: A.R.S. §§ 3-107(A)(1) and (B)(3); Laws 2022, 2nd Reg. Sess., Ch. 312, § 9.

Implementing Statute: Laws 2022, 2nd Reg. Sess., Ch. 312, § 9; A.R.S. § 3-109.02(A).

Statute or session law authorizing the exemption: Laws 2022, 2nd Reg. Sess., Ch. 312, § 9.

2. The objective of each rule:

Rule	Objective
R3-6-102	Sets out temporary fee increases as authorized by 2022 session law for fees that must be paid to obtain certification documents from the Department stating that regulated plant product commodities meet the phytosanitary entry requirements for domestic shipments.

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

R3-6-102 is effective in achieving its objective.

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

R3-6-102 is consistent with other rules and statutes.

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

R3-6-102 is enforced as written.

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

R3-6-102 is clear, concise and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes___No x**

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

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

Because this rule was adopted by exempt rulemaking, a formal economic, small business, and consumer impact comparison was not prepared.

The Department issues certificates, pursuant to A.R.S. § 3-109.02(A), as a service to shippers of plants and plant products, not covered under A.R.S. § 3-217 and R3-4-301, to meet the phytosanitary entry requirements for domestic shipments of regulated plant product commodities that are found free of regulated plant pests and diseases. Fees generated by the rule pay the administrative costs to produce the certificates. Without the income generated, the Department would not be able to provide these services and the regulated community would not be able to export regulated plant products out of the state, decreasing the overall impact to the State's economy. The rule does not directly affect employment, consumers or state revenues.

Beginning in fiscal year (FY) 2011, the Department changed fees for state phytosanitary certification from $50 per Department site trip to $50 for the first lot plus $10 for each additional lot per site trip. The fee increases were implemented through legislation that allowed for a one year increase in fees in order to make up for decreases in general fund appropriations. Each year, since that time, similar legislation has passed allowing the Department to keep up these fee increases for one more year at a time. The current fee increase will end at the end of the fiscal year. Laws 2023, 1st Reg. Sess., Ch. 138, **§** 9 authorizes these fees to continue in FY 2024. The Department will be filing an exempt rulemaking with the Secretary of State's Office to continue these fees in FY 2024.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes____No x___**

No business competitive analysis has been received.

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

There is not a previous one-year review report because R3-6-102 became effective September 24, 2022.

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

The Department has determined that the benefits of the rule R3-6-102 outweighs the costs imposed by the regulatory community, and are the least burdensome and cost effective.

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

R3-6-102 is not more stringent than Federal law

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

R3-6-102 does not require a permit.

14. Proposed course of action

The Department proposes to maintain the rule as is. The Department proposes to maintain the rule as is. The Department intends to submit a request to the Governor's Office Policy Advisor in July, 2023 to request approval to conduct rulemaking for rule R3-6-102 pursuant to A.R.S. § 41-1039(A). Within 30-days of receiving approval to proceed with rulemaking from the Governor's Office Policy Advisor, the Department will file an exempt rulemaking with the Secretary of State's Office in accordance with Laws 2023, 1st Reg. Sess., Ch. 138, § 9 to continue phytosanitary certification fees from fiscal year 2023 in fiscal year 2024.

ARTICLE 1. MARKETING

R3-6-101. Certificate of Free Sale

A. Any person manufacturing or distributing a consumable product in Arizona and who wants to sell it domestically or abroad, may apply to the Department for a Certificate of Free Sale. If an applicant is a subsidiary of a corporation, the application will be accepted only from the parent company. The application shall contain:

1. The name, address, telephone, and facsimile number of the company;
2. The name of the contact person;
3. A list of the consumable products manufactured, distributed, or sold in Arizona;
4. The printed name, signature, and social security number of the responsible party;
5. The country of export, if applicable;
6. The fee prescribed in subsection (B);
7. Copies of 3 different invoices or bills-of-lading from the 3 months preceding the application; and
8. The purchaser's telephone number cited on each invoice or bill-of-lading.

B. Fees.

1. Certificate of Free Sale: $25 for each 100 products, plus the cost of postage;
2. Duplicate certificates, if requested within 3 months of the original certificate issue: $1 per page, plus the cost of postage.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 45, effective December 8, 1999 (Supp. 99-4).

R3-6-102. Phytosanitary Certification

A. During fiscal year 2023, a person who applies to the Department for phytosanitary certification shall pay the following fee:

1. For state certification, $50 for the first lot plus $10 for each additional lot per Department site trip.
2. For federal certification, $50 plus the federal administrative user fee set out in 7 CFR 354.3(g)(3)(i), revised January 1, 2016, which is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available for inspection at the Department, 1110 W. Washington St., Suite 450, Phoenix, Arizona 85007 or may also be viewed at http://www.gpo.gov/fdsys/.

B. This Section does not apply to phytosanitary certification under A.A.C. R3-4-301.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1339, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1765, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2066, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3146, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2457, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2412, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1943, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2226, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2088, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1475, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1269, effective September 29, 2021 (Supp. 21-3). Amended by final exempt rulemaking at 28 A.A.R. 2022 (August 12, 2022), effective September 24, 2022 (Supp. 22-3).

ARTICLE 2. JOINT-VENTURES

R3-6-201. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

R3-6-202. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

R3-6-203. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

R3-6-204. Expired

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 312

HOUSE BILL 2861

AN ACT

AMENDING TITLE 41, CHAPTER 10, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1510; AMENDING SECTION 49-210, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-211; APPROPRIATING MONIES; RELATING TO THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 41, chapter 10, article 1, Arizona Revised Statutes, is amended by adding section 41-1510, to read:

41-1510. Water infrastructure and commerce grant fund

A. THE WATER INFRASTRUCTURE AND COMMERCE GRANT FUND IS ESTABLISHED CONSISTING OF LEGISLATIVE APPROPRIATIONS, FEDERAL MONIES AND PRIVATE DONATIONS. THE CHIEF EXECUTIVE OFFICER SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. MONIES IN THE FUND MAY BE USED TO PROVIDE GRANTS TO ELIGIBLE ENTITIES FOR CONTRACTING FOR THE DESIGN AND CONSTRUCTION OF WATER INFRASTRUCTURE AT THE ELIGIBLE ENTITY'S LOCATION. THE AUTHORITY MAY RETAIN UP TO ONE PERCENT OF THE MONIES IN THE FUND ANNUALLY TO ADMINISTER THE FUND.

B. THE FOLLOWING ENTITIES ARE ELIGIBLE TO APPLY FOR AND RECEIVE GRANT MONIES PURSUANT TO THIS SECTION:

1. A PUBLIC SERVICE CORPORATION THAT PROVIDES WATER SERVICE PURSUANT TO A CERTIFICATE OF CONVENIENCE AND NECESSITY ISSUED BY THE CORPORATION COMMISSION AND THAT IS ACTING ON BEHALF OF AN EMPLOYER PRESCRIBED IN PARAGRAPH 2 OF THIS SUBSECTION.

2. AN EMPLOYER WITH MORE THAN TWO HUNDRED FIFTY EMPLOYEES THAT IS LOCATED IN A COUNTY WITH A POPULATION OF MORE THAN FOUR HUNDRED THOUSAND PERSONS AND LESS THAN ONE MILLION PERSONS.

C. THE AUTHORITY SHALL:

1. PRESCRIBE A SIMPLIFIED FORM AND PROCEDURE TO APPLY FOR AND APPROVE GRANTS.

2. ESTABLISH REQUIREMENTS AND CRITERIA BY WHICH GRANTS WILL BE AWARDED, WHICH SHALL INCLUDE AT LEAST THE FOLLOWING:

(a) GRANTS TO ELIGIBLE APPLICANTS ONLY FOR NEW WATER INFRASTRUCTURE PROJECTS THAT ARE LOCATED AT THE ELIGIBLE APPLICANT'S PROPERTY IN A COUNTY WITH A POPULATION OF MORE THAN FOUR HUNDRED THOUSAND PERSONS AND LESS THAN ONE MILLION PERSONS.

(b) GRANTS FOR PROJECTS THAT CREATE NEW JOBS.

(c) GRANTS FOR PROJECTS THAT BEGIN AFTER JANUARY 1, 2022.

(d) GRANTS THAT ARE ALLOCATED AND DISTRIBUTED NOT LATER THAN DECEMBER 31, 2024.

(e) APPLICANTS MAY RECEIVE MORE FAVORABLE CONSIDERATION FOR GRANT MONIES IF THE APPLICANT INCLUDES COLLABORATION AND COOPERATION WITH OTHER MEMBERS AND ENTITIES IN THE COMMUNITY.

(f) APPLICANTS SHALL CERTIFY THAT THEY ARE ELIGIBLE TO RECEIVE GRANT MONIES, SHALL DESCRIBE THE PROJECT AND SERVICES REQUESTED AND WHY THE PROJECT AND SERVICES ARE NEEDED AND SHALL CERTIFY THAT ALL GRANT MONIES WILL BE USED IN COMPLIANCE WITH THIS SECTION, THE AUTHORITY'S REQUIREMENTS, THE APPLICATION REQUIREMENTS AND PROCESSES AND OTHERWISE APPLICABLE LAW.

D. BEFORE AWARDING A GRANT PURSUANT TO THIS SECTION, THE AUTHORITY SHALL PREPARE A WRITTEN STATEMENT THAT IS SIGNED BY THE CHIEF EXECUTIVE OFFICER, THAT ASSESSES THE DIRECT ECONOMIC IMPACT OF THE GRANT, INCLUDING THE NUMBER OF NEW JOBS THAT WILL BE CREATED, AND THAT CONTAINS A FINDING THAT THE AWARD OF GRANT MONIES IS IN THE BEST INTEREST OF THIS STATE.

E. ON OR BEFORE DECEMBER 15 OF EACH YEAR, THE AUTHORITY SHALL SUBMIT AN ANNUAL REPORT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE. THE REPORT SHALL INCLUDE, AT A MINIMUM, THE AMOUNT OF ACTUAL EXPENDITURES FROM THE FUND BY PROJECT AND AN EXPENDITURE PLAN FOR ALL REMAINING MONIES BY PROJECT.

Sec. 2. Section 49-210, Arizona Revised Statutes, is amended to read:

49-210. Water quality fee fund; appropriation; exemption; monies held in trust

A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-211, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.

B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

D. Monies in the water quality fee fund shall be used for the following purposes:

1. To issue aquifer protection permits pursuant to section 49-241.

2. The aquifer protection permit registration fee procedures pursuant to section 49-242.

3. Dry well registration fee procedures pursuant to section 49-332.

4. Technical review fee procedures pursuant to section 49-353.

5. Inspection fee procedures pursuant to section 49-104, subsection C.

6. To issue permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.

7. Operator certification pursuant to sections 49-352 and 49-361.

8. Paying the cost of implementing section 49-203, subsection A, paragraph 7 and section 49-221, subsection E.

9. Water quality monitoring pursuant to section 49-225 and reporting of aquifer pollution information pursuant to section 49-249.

10. To implement and administer the underground injection control permit program established pursuant to article 3.3 of this chapter.

11. To implement and administer the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

Sec. 3. Title 49, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 49-211, to read:

49-211. Direct potable reuse of treated wastewater; fees; rules

A. ON OR BEFORE DECEMBER 31, 2024, THE DIRECTOR SHALL ESTABLISH BY RULE PERMIT FEES SUFFICIENT TO ADMINISTER A DIRECT POTABLE REUSE OF TREATED WASTEWATER 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. ON OR BEFORE DECEMBER 31, 2024, THE DIRECTOR SHALL ADOPT ALL RULES NECESSARY TO ESTABLISH AND IMPLEMENT A DIRECT POTABLE REUSE OF TREATED WASTEWATER PROGRAM, INCLUDING RULES ESTABLISHING PERMITTING STANDARDS AND A PERMIT APPLICATION PROCESS.

Sec. 4. Arizona water protection fund; use of monies

Notwithstanding section 45-2114, Arizona Revised Statutes, in fiscal year 2022-2023, the Arizona water protection fund commission may grant to the department of water resources up to $336,000 of the unobligated balance in the Arizona water protection fund established by section 45-2111, Arizona Revised Statutes, to pay for administrative costs of the department in fiscal year 2022-2023.

Sec. 5. Underground storage tank revolving fund; use of monies

Notwithstanding any other law, in fiscal year 2022-2023, the department of environmental quality may use up to $6,531,000 from the underground storage tank revolving fund established by section 49-1015, Arizona Revised Statutes, in fiscal year 2022-2023 for:

1. Administrative costs of the department.

2. Remediating sewage discharge issues in Naco, Arizona and other border areas of this state.

Sec. 6. Arizona water banking fund; use of monies

In addition to the purposes provided in section 45-2425, Arizona Revised Statutes, monies appropriated to the Arizona navigable stream adjudication commission from the Arizona water banking fund established by

section 45-2425, Arizona Revised Statutes, may be used in fiscal year 2022-2023 to pay legal fees.

Sec. 7. Appropriation limit; water quality assurance revolving fund

Notwithstanding section 49-282, Arizona Revised Statutes, the appropriation from the state general fund to the water quality assurance revolving fund established by section 49-282, Arizona Revised Statutes, for fiscal year 2022-2023 may not exceed $15,000,000.

Sec. 8. Department of environmental quality; vehicle emissions testing fees; exemption from rulemaking

A. Notwithstanding any other law, the director of environmental quality shall charge fees in fiscal year 2022-2023 that are not more than the fees that were charged in fiscal year 2021-2022 for tests conducted in Area A, as defined in section 49-541, Arizona Revised Statutes.

B. The department of environmental quality is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until July 1, 2023 for the purpose of establishing fees pursuant to this section.

Sec. 9. Agricultural fees; continuation; intent; rulemaking exemption

A. Notwithstanding any other law, the director of the Arizona department of agriculture, with the assistance of the department of agriculture advisory council, may continue, increase or lower existing fees from fiscal years 2020-2021 and 2021-2022 in fiscal year 2022-2023 for services provided in fiscal year 2022-2023.

B. The legislature intends that the additional revenue generated by the fees prescribed in subsection A of this section not exceed $218,000 to the state general fund, $113,000 to the pesticide trust fund established by section 3-350, Arizona Revised Statutes, and $26,000 to the dangerous plants, pests and diseases trust fund established by section 3-214.01, Arizona Revised Statutes, in fiscal year 2022-2023.

C. The Arizona department of agriculture is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until July 1, 2023 for the purpose of establishing fees pursuant to this section.

APPROVED BY THE GOVERNOR JUNE 28, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 28, 2022.

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.

2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.

3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.

5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.

7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.

8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.

9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.

10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-109.02. Office of commodity development and promotion; fees; commodity promotion fund; definition

A. The office of commodity development and promotion shall provide for programs to stimulate, educate, encourage and foster the production and consumption of Arizona agricultural products domestically and abroad.

B. The office may provide authorized or contracted administrative functions for councils and commissions established by law.

C. The director may collect a fee, which the director shall establish by rule, for the issuance of certificates of free sale. The amount of the fee shall not exceed the actual cost of preparing the certificate of free sale. All monies collected from the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the commodity promotion fund.

D. The commodity promotion fund is established. The fund consists of all monies collected pursuant to any promotional service provided to industry under this section and not supported by general fund appropriation, and monies received pursuant to section 3-107, subsection B, paragraph 8. The director shall administer the fund. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are:

1. Continuously appropriated to the department for the purposes of this section.

2. Exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. For the purposes of this section, "certificate of free sale" means a document that authenticates a commodity that is generally and freely sold in domestic channels of trade.

ARIZONA DEPARTMENT OF AGRICULTURE
ONE-YEAR RULE REVIEW REPORT
FEE COMPARISON - 3 A.A.C. 2

Greetings Council Member Spector,

The team at AZDA has compiled some information regarding how our fees for meat processing, livestock inspection, and dairy licensing compare to other states per your request during the review of the agency's One-Year Rule Review Report at the August 29, 2023 Study Session. It would take some time to do a complete comparative analysis, but we believe the information included here should shed some light on our program fees. We hope you find this information useful and if you have any additional questions, please let us know.

Meat Processing - R3-3-203

Each state is different in how they charge for inspections and the amount of funds each state contributes to their agriculture programs. California, Nevada, New Mexico, Colorado, Idaho, Washington, and Nebraska do not have a state meat inspection program, so no data is available. These are under a federal inspection program. Our nearest neighbors with programs are Wyoming and Utah. These states charge $200 and $150 per year, respectively. Due to the inspection costs incurred, all 29 states with state meat inspection programs would like to charge more than they are currently charging. To compare our fees to the cost for retail meat stores, Maricopa county charges over $600 a year per store which they visit 4 times a year. We visit every establishment each day they operate, which could be as much as 260 times a year for $300. This breaks down to $1.15 per inspection which in no way offsets the state's cost to provide our service which allows them to sell their products or services. It is federally mandated that an official inspector performs an on-site inspection each day the processing facility is in operation.

To obtain or renew a license to slaughter in Arizona:

- Not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: $250.
- For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: $300.
- For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: $450.

To obtain or renew a meat license in Arizona:

- For a broker, $450.
- For exempt processing, $300.
- For a distributor, $500 for a large distributor (more than $100,000 in sales per calendar year) and $150 for a small distributor (not to exceed $100,000 in sales per calendar year).
- For a jobber, $450.
- For a pet food manufacturer, $300.
- For a processor, $300.
- For meat storage, $450.
- For transportation, $300.

Dairy - R3-2-810.

Fees for dairy production vary greatly between the states. In addition to various licensing fees; several states charge assessment fees based on production volume of the processing plant. In Arizona, only dairy processors pay a fee for their licenses; the size of the plant is also considered

by charging per pasteurizer. It is hard to do an accurate comparative analysis compared to other states.

For example:

- New Mexico does not charge any fees for the production and processing of their dairy products.
- Nevada charges fees that range from $75 for the producer (Dairy farm) to $500 for a processing plant. In addition to the licensing fee Nevada charges an assessment fee of $0.0004 to $0.01 per pound based on how much product a processing plant produces.
- California's licensing/permit fees are $100 and are assessed to the plant, each individual equipment, milk tankers, and pasteurizer operators. CA also charges an assessment fee based on production volume. For an initial plant start up the plant is billed for the cost of plant review and initial inspections this start up cost could be several thousands.

To obtain or renew a dairy license in Arizona.

- For a license to operate a milk distributing plant or business: $300 plus $2,500 per pasteurizer.
- For a license to operate a manufacturing milk processing plant: $100.
- For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: $150 plus $2,500 per pasteurizer.
- For a license to engage in the business of producer-distributor: $150.
- For a license to engage in the business of producer-manufacturer: $25.
- For a license to engage in the manufacture of trade products: $100.
- For a license to engage in the business of selling at wholesale milk or dairy products, or both: $100.
- For a license to sample milk or cream: an initial fee of $50 and a renewal fee of $30.

Livestock Inspection - R3-2-701

It is difficult to do an accurate comparative analysis of fees for livestock inspection for neighboring states. Most programs are funded differently from state to state and there may be other funding sources provided to these programs that are not apparent. The funding generated from the fees in Arizona only partially fund the entirety of the program. Without the fees, resources would be reduced and the Department would have no choice but to limit the amount of time allocated to these programs. This would significantly impact commerce. Here are the fees that some neighboring states are required to pay for livestock inspection.

California -
Per head fee for inspection, all inspections are $ 1.40 with the following exceptions:

- $.65 California cattle into registered feedlot, from a Feedlot to out-of-state sale, from a Feedlot to out-of-state pasture movement.
- $.40 Out-of-state cattle and cattle from a California saleyard shipped direct to a registered feedlot.
- $.60 Saleyard re-inspection.
- $1.90 Hide Inspections.
- $1.00 California Beef Council on change of ownership.

- $1.00 California Cattle Council on change of ownership

The Fee per site is:

- $25.00 - 29 head or less
- $15.00 - 30 head or more

Nevada -

Cattle

- $10.00 for the 1st animal, $1.00 each additional.
- $1.00 per head for Beef Promotion, if applicable.

Horses

- $10.00 1st horse, $3.00 each additional
- $25.00 Annual Transportation Permit
- $50.00 Lifetime Transportation Permit

Livestock Movement Permit

- $25.00 per year
    - Time - $16.00 per hour
    - Mileage - $ .555 per mile

Special Sales

- Regular fees plus time and mileage
- Holidays and less than 24 hour notice
- Regular fees plus time and mileage

New Mexico -

Service charge for one-way movement field inspections and animal hide inspections

- 1 head and up is $10.00 per certificate/per species in addition to fees below for each species:

    *Cattle & Bison $ 0.50 per head
    *Equine $ 0.50 per head
    *Hides $ 0.50 per hide
    *Sheep & Goat $ 0.16 per head
    *Pelts $ 0.12 per head

- Permanent equine hauling card
    - $35.00 ($ 25.00 permit + $ 10.00 service charge)
- Annual equine permit hauling card with two transfers of ownership
    - $25.00 ($ 15 permit + $ 10.00 service charge)

Utah -

Brand inspection fees, per head of livestock.

- Brand inspection, $1.00
- Beef promotion (cattle only), $1.50
- Predator (cattle only), 0.25
- Annual Permit for multiple trips out-of-state, $25
- Minimum charge per certificate, $20

Change of ownership (In-state or Out-of-State)

- Brand inspection fees, plus $2.75 per head inspected

No change of ownership, shipped out-of-state

- $1.00 per head inspected

The inspection fees in Arizona for the inspection of livestock that will be moved out-of-state, transferred to another owner, or shipped for slaughter is $10, plus the per head inspection fee of:

- $0.25 per head of cattle
- $0.05 per head of sheep
- $0.05 per head of dairy cattle

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 1, 2023; September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 1

Staff Update

This Five-Year Review Report (5YRR) was previously considered at the July 25, 2023 Study Session and August 1, 2023 Council Meeting. At those meetings there were questions from the Council regarding medication services and repurposing of medications pursuant to A.R.S. § 32-1909. The Department of Health Services (Department) indicated that the rules regarding medications referenced in R9-10-102 are applicable to all Articles in Chapter 10, and the rules more relevant to the questions posed by the Council would be found in Title 9, Chapter 10, Article 8 (Assisted Living Facilities). As the 5YRR for Title 9, Chapter 10, Article 8 is up for review during the current meeting cycle, at the August 1, 2023 Council Meeting, the Council voted to table consideration of the 5YRR for Title 9, Chapter 10, Article 1 to the current meeting cycle as well so the two reports could be considered alongside each other.

Summary

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 10, Article 1, regarding health care institutions licensing.

In the last 5YRR of these rules, the Department proposed to amend several of its rules. The Department completed the changes through final rulemaking effective October 1, 2019.

Proposed Action

The Department is proposing to amend several of its rules in order to make them more clear, concise, understandable, effective, and consistent with other rules and statutes. The Department indicates they plan to submit a Notice of Final Rulemaking to the Council by February 2024.

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 indicates that the rules establish minimum standards for the construction, modification, and licensure of health care institutions necessary to ensure the public health, safety, and welfare. The Department currently licenses nearly 8,000 facilities as one of 27 classes/subclasses of health care institutions under the rules in 9 A.A.C. 10, Article 1. The Department states the rules have been revised 9 times in the past five years. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

Stakeholders include the Department, health care institutions licensed under the rules, medical practitioners in licensed health care institutions, personnel members in licensed care institutions, patients, residents, participants, recipients and their families, and the general public. In addition, architects, contractors, and engineers involved in the construction or modification of a health care institution are also stakeholders for R9-10-104 and R9-10-104.01. The Arizona Health Care Cost Containment System (AHCCCS) is also a stakeholder for R9-10-112.

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 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?

Yes, the Department two comments regarding two rules from Maricopa County Planning and Developing and from Arizona Building Officials. The Department adequately addressed the comments, and are proposing to amend the rules in response.

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:

R9-10-101 - Definitions
R9-10-105 - License Application
R9-10-106 - Fees
R9-10-121 - Disease Prevention and Control

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 with the exception of the following:

R9-10-101 - Definitions
R9-10-102 - Health Care Institution Classes and Subclasses; Requirement
R9-10-104 - Approval of Architectural Plans and Specifications
R9-10-105 - License Application
R9-10-106 - Fees
R9-10-108 - Time-Frames
R9-10-109 - Changes Affecting a License
R9-10-110 - Modification of a Health Care Institution
R9-10-120 - Opioid Prescribing and Treatment

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

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

R9-10-112 - Denial, Revocation, or Suspension of License

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?

Yes, the rules indicate the rules require the issuance of specific authorization authorized by A.R.S. 36-405, and a general permit is not applicable.

11. Conclusion

As mentioned above, the Department is proposing to amend several of its rules in order to make them clear, concise, understandable, effective, and consistent with other rules and statutes. The Department plans to submit a Notice of Final Rulemaking to the Council by February 2024.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

May 23, 2023

VIA: E-MAIL: grrc@azdoa.gov
Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: ADHS, A.A.C. Title 9, Chapter 10, Article 1 Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report from the Arizona Department of Health Services (Department) for A.A.C. Title 9, Chapter 10 Health Care Institutions, Article 1 General which is due on May 31, 2023.

The Department reviewed the following rules in A.A.C. Title 9, Chapter 10, Article 1 with the intention that those rules do not expire under A.R.S. § 41-1056(J).

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

For questions about this report, please contact Emily Carey at 602-542-5121 or emily.carey@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

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 1. General

May 2023

1. Authorization of the rule by existing statutes:

Authorizing statutes: A.R.S. §§ 36-132(A)(17), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-405, 36-406, and 36-430

In addition, the following rules have additional specific statutory authority:

Rule	Statutory Authority
R9-10-104	A.R.S. §§ 36-421 and 36-422
R9-10-105	A.R.S. §§ 36-407, 36-421, 36-422, 36-424, and 36-425
R9-10-106	A.R.S. § 36-405(B)(5)
R9-10-107	A.R.S. §§ 36-407, 36-422, and 36-425
R9-10-108	A.R.S. §§ 41-1073 through 41-1076, and 41-1079
R9-10-109	A.R.S. §§ 36-407, 36-422, and 36-425
R9-10-110	A.R.S. §§ 36-407, 36-421, and 36-422
R9-10-111	A.R.S. §§ 36-424, 36-425, 36-427, and 36-429
R9-10-112	A.R.S. §§ 36-424, 36-425, 36-427, 36-429, and 36-2901.08
R9-10-113	A.R.S. § 36-136(I)(1)
R9-10-114	A.R.S. § 36-423
R9-10-116	A.R.S. § 36-413
R9-10-119	A.R.S. § 36-2161

2. The objective of each rule:

Rule	Objective
R9-10-101	To define terms used in 9 Arizona Administrative Code (A.A.C.) 10 so that a reader can consistently interpret requirements in the Chapter.
R9-10-102	To identify the classes and subclasses under which a health care institution may apply for a license; and To require a health care institution to comply with the requirements in Article 17 if there are no specific rules in 9 A.A.C. 10 for the health care institution's class or subclass, or if the Department determines that the health care institution is an unclassified health care institution.
R9-10-103	To establish exceptions to health care institution licensing requirements for certain health care institutions or parts of health care institutions; and

	To identify when a hospital and its facilities do not require separate health care institution licenses.
R9-10-104	To establish requirements for an application for approval of architectural plans and specifications for construction or modification of a health care institution required to comply with any physical plant codes and standards in A.A.C. R9-1-412; To specify that an applicant may request an architectural evaluation from the Department; To require the Department to approve or deny architectural plans and specifications for a health care institution according to R9-10-108; and To clarify that obtaining Departmental approval of applicable architectural plans and specifications is a part of, but does not replace, the requirement to obtain a health care institution license before operating a health care institution.
R9-10-105	To establish initial license application requirements for health care institutions, including information regarding the health care institution's location, contact information, class or subclass, owner, governing authority, chief administrative officer, and physical plant; and To require a health care institution to comply with the initial application requirements in 9 A.A.C. 10 for the class or subclass for which licensure is requested.
R9-10-106	To establish a range of fees that the Department collects for licensing of health care institutions.
R9-10-107	To establish renewal license application requirements for health care institutions, including information regarding the health care institution's location, contact information, class or subclass, owner, governing authority, chief administrative officer, and physical plant; and To establish criteria for when a license is issued for a one-year or two-year period or for the duration of an accreditation period.
R9-10-108	To delineate time-frames for the Department to grant or deny an initial or a renewal license, or grant or deny approval of an application from a health care institution.
Table 1.1	To specify time-frames for the Department’s review of architectural plans and specifications, an initial or a renewal license, or an application for a modification for a health care institution.
R9-10-109	To establish which changes to a health care institution, require a licensee to notify the Department; To establish the information a licensee or a health care institution's governing authority is required to provide to the Department when a change specified in the rule occurs; To establish notification requirements for an adult behavioral health therapeutic home, a behavioral health respite home, an affiliated outpatient treatment center, or a counseling facility; To specify when a new initial license application is required and when documentation of a health care institution's architectural plans and specifications are not required to be submitted with an initial application; To require the Department to approve or deny a request for a change in services or modification of a health care institution according to R9-10-108; and To prohibit a licensee from implementing a change or modification described in the rule until an approved or amended license is issued by the Department.
R9-10-110	To specify when a health care institution is required to submit an application for approval of architectural plans and specifications for a modification to the Department, To establish the documentation a licensee is required to submit to the Department when requesting approval of a modification, To require the Department to approve or deny a request for a modification according to R9-10-108, and

	To prohibit a licensee from implementing a modification described in the rule until an approval or amended license is issued by the Department.
R9-10-111	To establish the actions that the Department may take if an applicant or licensee is not in substantial compliance with applicable rules, and To establish the factors that the Department will consider in determining the appropriate enforcement action.
R9-10-112	To establish the circumstances under which the Department may deny, revoke, or suspend a license to operate a health care institution for an applicant, licensee, or controlling person of the health care institution.
R9-10-113	To establish requirements related to screening for tuberculosis.
R9-10-114	To establish clinical practice restrictions for a hemodialysis technician trainee working in a health care institution.
R9-10-115	To establish requirements for a health care institution using behavioral health technicians or behavioral health paraprofessionals for providing services to patients of the health care institution.
R9-10-116	To establish requirements related to the approval and operation of a nutrition and feeding assistant training program.
R9-10-118	To establish requirements for a collaborating health care institution related to documentation and to the collaborating health care institution's responsibilities for patients referred by the collaborating health care institution to an adult behavioral health therapeutic home or a behavioral health respite home.
R9-10-119	To clarify the abortion reporting requirements in A.R.S. § 36-2161, and To specify situations where a transfer of custody of fetal tissue would require reporting and when it would not require reporting.
R9-10-120	To establish requirements for a health care institution related to prescribing, ordering, or administering opioids as part of treatment.
R9-10-121	To establish requirements for a health care institution related to disease prevention and control.

3. Are the rules effective in achieving their objectives? Yes ___ No _√_

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

Rule	Explanation
R9-10-112	The rule could be more effective if the circumstances of when the Department may deny, revoke, or suspend a license to operate a health care institution were reviewed and potentially expanded in regards to health care institutions that have been operating without seeing a patient within twelve months to assist in protecting the health and safety of the public.

4. Are the rules consistent with other rules and statutes? Yes ___ No _√__

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

Rule	Explanation

R9-10-101	The rule is consistent with other rules and statutes, however the definition in subsection (232) regarding "telemedicine" could be amended to adhere to the statutory change that occurred based on Laws 2021, Ch. 320, which amended A.R.S. § 36-3601 revising the definition and use of the term "telemedicine" to "telehealth."
R9-10-102	The rule could be improved by adding in an exemption for the subclass of outpatient treatment centers specified by Laws 2022, Ch. 128, that allow exemptions for licensing requirements of specified outpatient treatment centers that have the same governing authority as a hospital licensed pursuant to A.R.S. Title 36, Chapter 4. In addition, the rule could be amended to add in a subclass of a health care institution for a secured behavioral health residential facility to align more with Laws 2022, Ch. 352. In addition, Laws 2022, Ch. 352 amends A.R.S. § 36-425.06 to add in another commitment court order for admission to a licensed secure behavioral health residential facility. The Department believes that adding in another subclass for secure behavioral health residential facilities will make the rules clearer, and more understandable.
R9-10-104, R9-10-108, & R9-10-110	The rule could be improved to align more with Laws 2022, Ch. 34, by removing sections related to the approval of architectural plans and specifications that an applicant must submit if the health care institution is constructing or modifying due to the legislation requiring a notarized attestation from an architect registered pursuant to A.R.S. Title 32, Chapter 1. The submission of the architectural plans and specifications for this type of change will no longer be required, therefore the rules should be amended to include the requirement of a notarized attestation from an architect.
R9-10-105	The rule is consistent with other rules and statutes, however may be amended to include language for the exception of nursing supported group homes in the license application to be aligned with other rules. Laws 2021, Ch. 60 added an exception for nursing supported group homes in licensing applications in A.R.S. § 36-421 that are not required to comply with zoning standards for a health care institution. This change will make the rule clearer and more consistent with other rules and statutes. In addition, the rule could be improved to remove the references to approval of architectural plans and specifications in R9-10-104 in reference to Laws 2022, Ch. 34 now requiring a notarized attestation from an architect for modifications of a health care institution. In addition, the rule would be more effective and consistent with other Department rules, if changes were made to an application to more accurately reflect the types of documentation applicants provide on the license application regarding citizen status if an owner is a sole proprietorship.
R9-10-106, Table 1.1	The rule is consistent with other rules and statutes, however may be amended to be in compliance with Laws 2022, Ch. 34, to remove subsection (A) that relates to the fees associated with the architectural plans and specifications that an applicant must submit if the health care institution is constructing or modifying the facility. Laws 2022 Ch. 34 requires a notarized attestation from an architect registered pursuant to A.R.S. Title 32, Chapter 1 that will verify the architectural plans and specifications meet or exceed the standards adopted by the Department. The submission of the architectural plans and specifications for this type of change will no longer be required pursuant to A.R.S. § 36-405, therefore the fees associated with the changes should be removed from the rules. In addition, the rule could be more effective if the fee amounts were reviewed and potentially changed. For example, an addition of fees associated with issuing a duplicate license, and fees associated with a modification of a health care institution. These changes would be made so the rules could more accurately reflect the costs to the Department, and be more consistent with other rules prescribed by the Department.
R9-10-109	The rule is consistent with other rules and statutes, however may be amended to correct subsection (E) regarding the cross-reference to A.R.S. § 36-424(B). Laws 2021 Ch. 15 amended A.R.S. § 36-424(B) regarding exceptions of health care institutions for inspections, suspensions, or revocations of licenses if a health care institution can provide the appropriate

	documentation to the Department. The subsection should be amended to be aligned with the statute.
R9-10-120	The rule is consistent with other rules and statutes, however may be amended in subsections (D)(1)(b) and (E)(1)(b) to update the statutory reference from A.R.S. § 36-2606(G) to A.R.S. § 36-2606(H) to be consistent with the context of the rules.

5. Are the rules enforced as written? Yes _√_ No ___

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

Rule	Explanation

6. Are the rules clear, concise, and understandable? Yes ___ No _√_

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

Rule	Explanation
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.
R9-10-101	The rule is clear, concise, and understandable, however definitions (35) and (38) could be amended to be clearer and more understandable.
R9-10-105	The rule is clear, concise, and understandable, but subsection (A)(5) could be amended to correct a grammatical error, and amend language to adhere to changes in R9-10-104. Subsection (A)(2) could also be amended to clarify the documentation that a property owner must provide to the Department, if the health care institution is located on a leased facility.
R9-10-106	The rule is clear, concise, and understandable, however several subsections could be amended to correct subsection cross-references to adhere to the changes of removing subsection (A).
R9-10-121	The rule is clear, concise, and understandable, however, subsection (G)(3) could be amended to remove or correct the website reference to the EPA-approved household disinfectant specified list, as the website link does not provide the list referenced in the rule.

7. Has the agency received written criticisms of the rules within the last five years? Yes _√_ No ___

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
Maricopa County, Planning and Development	The Department received a written comment to revise the rules in R9-10-104 regarding the fire code reference that is specific to the incorporated reference from 2016. The commenter stated that Maricopa County does not have a fire department, therefore does not adopt a fire code, and follows the local fire authority having jurisdiction. The commenter requests that the Department remove the specific year of the fire code	The Department plans to amend the rules in R9-10-104 to remove the reference to a specific year of the fire code, in order to make the rules clearer, and more effective.

	incorporation in the rules, and amend the rules to state "As adopted by the Office of the State Fire Marshal (OSFM)."	
Arizona Building Officials	The Department received a written suggestion to revise the rules in R9-10-105 regarding the documentation a health care institution must provide in licensing applications for intuitions that not are required to comply with the physical plant codes and standards incorporated in R9-10-104.01. The commenter requests that R9-10-105(A)(5)(b) be amended make the applicant provide on a department provided formatted document from the local jurisdiction of compliance with applicable local building codes and zoning ordinances. The commenter has concerns with the lack of a common State form due to there being inconsistent methods and documents used for customers and applicants, for example, a certificate of occupancy.	The Department plans to amend the rules in R9-10-105 regarding license applications to include the requirement of documentation being completed in a Department-provided format.

8. Economic, small business, and consumer impact comparison (summary):

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 ensure the public health, safety, and welfare. It further requires that the standards and requirements related to the construction, equipment, sanitation, staffing, and recordkeeping pertaining to the administration of medical, nursing, and personal care services according to generally accepted practices of health care.

The Department currently licenses nearly 8,000 facilities as one of 27 classes/subclasses of health care institutions under the rules in 9 A.A.C. 10, Article 1. As of January 1, 2023, these include: 111 hospitals; 64 behavioral health inpatient facilities; 142 nursing care institutions; five recovery care centers; 17 hospice inpatient facilities; 273 outpatient surgical centers; 2,766 outpatient treatment centers; one behavioral health specialized transitional facility; nine abortion clinics; three substance abuse transitional facilities; 1,017 behavioral health residential facilities; 46 unclassified health care institutions; 413 hospice service agencies; 229 home health agencies; 330 assisted living centers; 1,615 assisted living homes; 37 adult foster care homes; 17 adult day health care facilities; 10 behavioral health respite homes; 58 adult behavioral health therapeutic homes; and 455 counseling facilities. Under R9-10-111 and R9-10-112, the Department has undertaken 1,896 enforcement actions in the past year, resulting in the suspension or revocation of 12 licenses, and $1,444,901 in civil money penalties were assessed.

In the past five years, these rules have been revised 9 times. All of the rules, except R9-10-103 and R9-10-117, were amended through the rulemakings between 2019 and 2022. R9-10-101, R9-10-102, R9-10-106, and R9-10-120 was adopted by regular rulemaking at 24 A.A.R. 3020, effective January 1, 2019. An economic, small business, and consumer impact statement (EIS) was prepared as part of the regular rulemaking for these rules. Annual costs/revenues changes were designated in the EIS for R9-10-101, R9-10-102, R9-10-106, and R9-10-120 as minimal when less than $10,000, moderate when between $10,000 and $50,000, and substantial when greater

than $50,000. A cost was listed as significant when meaningful or important, but not readily subject to quantification. The rules were also amended by regular rulemaking at 25 A.A.R. 1583, effective October 1, 2019, as specified in the EIS, costs were delegated as minimal when $2,000 or less, moderate when between $2,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. Lastly, an EIS was completed for the rules amended by regular rulemaking at 26 A.A.R. 2793, with an immediate effective date of October 7, 2020. The EIS for this rulemaking quantified annual costs/revenue changes as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. An EIS was not prepared as part of the expedited or exempt rulemakings. The Department believes the costs and benefits related to these rulemakings provided a benefit to all stakeholders. Stakeholders affected by these rules include the Department, health care institutions licensed under the rules, medical practitioners in licensed health care institutions, personnel members in licensed health care institutions, patients, residents, participants, recipients and their families, and the general public. In addition, architects, contractors, and engineers involved in the construction or modification of a health care institution are also stakeholders for R9-10-104 and R9-10-104.01. The Arizona Health Care Cost Containment System (AHCCCS) is also a stakeholder for R9-10-112.

The rules in R9-10-101, R9-10-102, R9-10-106, and R9-10-120 were amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019. Laws 2018, Ch. 1 was enacted to require the Department to license a pain management clinic as a health care institution and create rules for a pain management clinic that included informed consent requirements, the responsibilities of a medical director, reporting requirements, and physical examination requirements. The rules in Article 1 were amended to adhere to these statutory changes, and cross-reference the new Article 20 implemented in this rulemaking. R9-10-101 was revised to add in definitions for "active malignancy," "benzodiazepine," "end-of-life," "opioid," "opioid antagonist," "pain management clinic," "prescribe," "sedative-hypnotic medication," "short-acting opioid antagonist" "substance use disorder," "substance use risk," and "tapering." The section was also amended to renumber the definitions to align with the formatting requirements established by the Secretary of State (SOS). The health care institution classes and subclasses in R9-10-102, were revised to include pain management clinics in subsection (A). The rules in R9-10-106 regarding fees were amended in subsection (C)(5) to specify what fees are required of pain management clinics when submitting an initial or renewal application to the Department. Lastly, the Department revised R9-10-120, to specify this section does not apply to the pain management clinics licensed under new Article 20. In addition, subsection (B) was removed from the rules that included the definitions, as these definitions were added into R9-10-101 to make the rules clearer. The rules were also reformatted to adhere to SOS requirements, and corrected cross-references to make the rules more understandable. The Department believes these changes may have imposed a minimal-to-moderate cost on health care institutions, and provided a significant benefit to other stakeholders by protecting the health and safety of patients, residents, families, and the general public. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules.

In addition, the rules in R9-10-101, R9-10-102, and R9-10-106 were amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019. The rules were revised to adhere to Laws 2019, Ch. 133 that required intermediate care facilities to be licensed by the Department under A.R.S. Title 36, Chapter 4. Previously to Laws 2019, Ch. 133, intermediate care facilities were certified only under the federal Center for Medicare and Medicaid Services. The Department revised the rules to adhere to this statutory change by revising R9-10-101, R9-10-102, and R9-10-106. Changes in R9-10-101 revised the definitions by adding the terms, "common area," "full-time," "interdisciplinary team," "intermediate care facility for individuals with intellectual disabilities," "placement evaluation," and "rehabilitation services." The definition of "resident" was amended to include intermediate care facility for individuals with intellectual disabilities. Also, the section was renumbered to be in compliance with the additional definitions and amendments. The health care institution classes and subclasses in R9-10-102, were revised to include intermediate care facilities for individuals with intellectual disabilities in subsection (A). Lastly, rules related to fees in R9-10-106(C)(4) were amended to specify what fees are required of intermediate care facilities for individuals with intellectual disabilities when submitting an initial or renewal application to the Department. The Department believes these changes may have imposed a minimal-to-moderate cost on health care institutions, but provided a significant benefit to other stakeholders by protecting the health and safety of patients, residents, participants, and recipients.

The Department amended the rules in R9-10-119 by final expedited rulemaking at 25 A.A.R. 1893, effective July 2, 2019. The rules were revised to comply with Laws 2018, Ch. 219 which amended A.R.S. §§ 36-2161 and 36-2162 regarding abortion providers to report to the Department additional information in abortion procedures and compliance reports. The cross-reference to A.R.S. § 36-2161 was amended in R9-10-119 to adhere to the new statutory changes. The Department believes that these changes did not increase any costs of regulatory compliance, or affect any fees or reduce procedural rights of person regulated, but did provide a significant benefit to all health care institutions by reducing a burden due to outdated requirements without comprising health and safety.

Per the 2018 five-year-review report, the rules in R9-10-101, R9-10-102, R9-10-104, R9-10-105, R9-10-106, R9-10-107, R9-10-108, R9-10-109, R9-10-110, R9-10-111, R9-10-112, R9-10-113, R9-10-114, R9-10-115, R9-10-116, and R9-10-118, were amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019. The definitions in R9-10-101, were revised to add multiple definitions, include statutory reference A.R.S. § 36-439 as additional definitions for the rules in Chapter 10, renumbered to meet reformatting SOS requirements, correct grammatical errors, and remove obsolete definitions. The health care institution classes and subclasses in R9-10-102 were revised to simplify and to include adult residential care institutions in subsection (A), and to reformat in compliance with formatting requirements provided by the SOS. R9-10-104 was revised to clarify the mailing and street address in the application for approval of architectural plans, specify the types of services or modifications that require an architect to review architectural plans and specifications rather than licensing personnel to review a floor plan/site plan, reformat and renumber sections, and correct grammatical errors. The rules in R9-10-105 were amended to change the title of the section from "Initial" to "License Application," clarify the application that a

person has to provide a Department-provided format, correct typographical errors, include the cross-reference, and provide clarification to R9-10-104 regarding approval of architectural plans. R9-10-106, regarding fees, was amended by clarifying grammatical errors, including a licensee with a single group license submitting an annual health care institution licensing fees to subsection (D), and revising subsection (F) for a late payment fee if a licensee is submitting an annual licensing fee according to R9-10-107. The rules in R9-10-107 amended the title of the section from "Renewal License Application" to "Submission of Health Care Institution Licensing Fees," removed all language in the rule and created new subsections to align with updated practices and make the rules be more clear, concise, and understandable. In addition, the rule was amended to be in compliance with Laws 2017, Ch. 122 regarding the licensing requirements in A.R.S. Title 36, Chapter 4. The rules in Time-frames and Table 1.1 according to R9-10-108 were amended to align with new definitions added to this Article, created a time limit for keeping open an application for approval of architectural plans and specifications before the application is considered withdrawn, corrected cross-references, and revised Table 1.1 in reference to approval of an alternative licensing fee due date, in compliance with Laws 2017, Ch. 122. R9-10-109 was revised to include notification of a change in the chief administrative officer of a health care institution consistent with A.R.S. 36-425(I); specified notification of a change in hours of operation; included requirements for a health care institution being a nationally recognized accrediting organization; corrected cross-references; and amended language to adhere to Laws 2017, Ch. 122 by removing language regarding an initial or renewal license application process. Amendments in R9-10-110, included specifying the needed information and documentation regarding a requested change being a modification; reformatting the subsections; and correcting cross-references. R9-10-111 was revised to correct subsection (A) cross-references to other rules in this Chapter. The rules in R9-10-112 for denial, revocation, or suspension of a license were amended to comply with Laws 2017, Ch. 122 regarding applicable requirements for an application and licensing fees. Tuberculosis screening rules in R9-10-113 were amended to be clearer, remove redundant rules, and use language to align with the definitions of the Chapter. R9-10-114, R9-10-115, and R9-10-116 were amended to correct cross-references, correct typographical errors, and make the rules more clear, concise and understandable. Lastly, R9-10-118 was amended to correct grammatical errors, and cross-references in subsections (B)(8) and (9). The Department believes these changes may have imposed a minimal-to-moderate cost on health care institutions and provided a significant benefit to other stakeholders by protecting the health and safety of patients, residents, participants, and recipients.

An expedited rulemaking was conducted at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019, to revise the rules regarding codes and standards that the Department incorporates by reference. The Department adopted rules in R9-1-411 and R9-1-412. R9-1-411 established rules of construction and provides other information for persons using the codes and standards incorporated by reference in R9-1-412. R9-1-412 incorporated by reference physical plant health and safety codes and standards that the Department referenced in its different sets of healthcare institution licensing rules in 9 A.A.C. 10. The Department has updated many of the incorporations by reference to the current codes and standards, from the 2012 versions to the 2018 versions. Since the codes and standards are used only in 9 A.A.C 10, the Department moved applicable

requirements from R9-1-411 and R9-1-412 into a new Section being added to 9 A.A.C. 10, Article 1, and updated cross-references throughout 9 A.A.C. 10 to the new Section. The rules in R9-10-101, R9-10-104, R9-10-105, and R9-10-110 were amended to correct cross-references to the new section in Article 1. R9-10-104.01 was made as a new section regarding codes and standards for health care institutions. The Department believes that these changes provided a significant benefit to all stakeholders to make the rules more clear, concise, and understandable.

The Department amended rules in 2020 in two rulemakings. R9-10-109 was amended by final expedited rulemaking at 26 A.A.R. 551, with an immediate effective date of March 3, 2020. The rules were revised to adhere to an exception regarding changes affecting a license. A.R.S. § 36-424(B) allows for exception to ensure a licensee provides current accreditation reports, and the Department not conducting onsite compliance inspection of the health care institution during the time the accreditation report is valid. A new section, R9-10-121, regarding disease prevention and control was made by final rulemaking at 26 A.A.R. 2793, with an immediate effective date of October 7, 2020. This new section was enacted from an emergency rulemaking found at 26 A.A.R. 509, effective March 20, 2020, due to the Governor declaring a state of emergency due to the COVID-19 outbreak and requiring the Department to adopt requirements to prevent the spread of COVID-19 to vulnerable Arizonans residing in nursing care institutions, intermediate care facilities for individuals with intellectual disabilities, or assisted living facilities. The section prescribes rules for when the governor has declared a state of emergency, as defined in A.R.S. § 26-301, to address a situation described under A.R.S. § 36-787, and how health care institutions administration shall ensure that policies and procedures are set into place to ensure the health and safety of their residents in this type of state of emergency. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules. The Department believes these changes provided a significant benefit to all stakeholders by protecting the health and safety of patients, residents, participants, and recipients.

An exempt rulemaking was conducted to amend R9-10-101, R9-10-102, and R9-10-106, found at 28 A.A.R. 927, with an immediate effective date of April 15, 2022. The rulemaking was conducted to add requirements for the licensing of nursing-supported group homes. R9-10-101 was revised to add in two new definitions of “habilitation services”, and “nursing care institution administrator,” and renumber the subsections to adhere to these revisions. Nursing-supported group homes were added in R9-10-102 to be a health care institutions classes or subclass in subsection (A). In R9-10-106 regarding fees, nursing-supported group homes were included in subsection (C)(4) to provide guidance on the fees nursing-supported group homes are required to provide for licensing. The Department believes that these changes provided a significant benefit to all stakeholders, with some providing a minimal benefit.

Lastly, the Department amended rules in R9-10-113 through expedited rulemaking at 28 A.A.R. 1113, with an immediate effective date of May 4, 2022. The rules were amended to comply with the U.S. Department of Health and Human Services, Center for Disease Control and Prevention (CDC) updated recommendations on tuberculosis screening in a manner that removed the requirement for annual screening if certain conditions are

met. Health care institutions requested the Department to amend the rules to incorporate by reference the 2019 CDC recommendations. The Department believes that these changes did not increase any costs of regulatory compliance, or affect any fees or reduce procedural rights of a person regulated, but did provide a significant benefit to all health care institutions by reducing a burden due to outdated requirements without comprising health and safety.

The Department believes the rule changes, as described above, that are more easily understood, complied with, and enforced, may have provided a significant benefit to the affected persons, including the Department, patients, residents, and participants. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

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

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 proposed to amend the rules in a rulemaking. The Department completed this plan of action by final rulemaking at 25 A.A.R. 1583, effective October 1, 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 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.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _√_

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

Federal laws are not applicable to the rules in 9 A.A.C. 10, 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 require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. Proposed course of action:

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

The Department plans to amend the rules in 9 A.A.C. 10, Article 1 as necessary to comply with statutory changes, address public comments, and correct grammatical errors. These changes will improve the effectiveness of the rules and the health and safety of patients receiving care at health care institutions. Therefore, the Department plans to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by February 2024.

Gmail

Patricia Grant <patricia.grant@azdoa.gov>

Fwd: Additional question for DHS (D2) TITLE 9, CHAPTER 10, TITLE 1

1 message

Anakaren Lemus <anakaren.lemus@azdoa.gov> Mon, Jul 31, 2023 at 2:16 PM
To: Patricia Grant <patricia.grant@azdoa.gov>, Simon Larscheidt <simon.larscheidt@azdoa.gov>

FYI - DHS' response to Council Member Thorwald's questions.

Thanks.

Anakaren Lemus

Legislative Specialist | ADOA - Director's Office

100 North 15th Avenue, Suite 302, Phoenix, AZ 85007

Anakaren.Lemus@azdoa.gov | http://www.azdoa.gov

---------- Forwarded message ---------
From: **Emily Carey** <emily.carey@azdhs.gov>
Date: Mon, Jul 31, 2023 at 11:42 AM
Subject: Re: Additional question for DHS (D2) TITLE 9, CHAPTER 10, TITLE 1
To: Anakaren Lemus <anakaren.lemus@azdoa.gov>

Hi Anakaren,

Please see below ADHS response to Council Member Thorwald's inquiries on Chapter 10, Article 1-General.

Regarding the proposed five-year-review report for Title 9, Chapter 10 Health Care Institutions, Article 1, the Department of Health Services rules regarding medications referenced in R9-10-120 for Opioid Prescribing and Treatment are applicable to all articles, unless explicitly stated otherwise, and are an addition to the rules specified in each correlating Article. The Department has implemented rules for medication services in each Article of Chapter 10 that are specific to the type of facility, as specified in each Article. For example, 9 A.A.C. 10, Article 8 regarding Assisted Living Facilities, stipulates the medication services in R9-10-816 that each facility must comply with for policies and procedures relating to medication administration and storage. The Department will review our rules regarding medications, however, the Department believes the medication services component of each Article is adequate and sufficient for personnel and facilities to follow for proper drug management and appropriation of medications.

Concerning the topic of repurposing medication in accordance with A.R.S. § 32-1909, the Department intends to incorporate the requirements in A.R.S. § 32-1909 into our rules for each kind of health care institution type. The Department believes this reference should be included, for example in R9-10-816(F) on policies and procedures on tracking, dispensing, and storing medications. The rules in R9-10-816 are attached for your convenience. The Department appreciates Council Member Thorwald for bringing forward these questions. Please let us know if there are any more questions. Thank you.

Thank you,

Emily Carey, M.S.
Senior Rules Analyst, Administrative Counsel & Rules
Arizona Department of Health Services
150 N 18th Ave, Phoenix, AZ 85007
Direct - 602-542-5121
Email - emily.carey@azdhs.gov
Health and Wellness for all Arizonans

On Fri, Jul 28, 2023 at 7:28 AM Emily Carey <emily.carey@azdhs.gov> wrote:

> Thank you!
>
> **Emily Carey, M.S.**
> Senior Rules Analyst, Administrative Counsel & Rules
> Arizona Department of Health Services
> 150 N 18th Ave, Phoenix, AZ 85007
> Direct - 602-542-5121
> Email - emily.carey@azdhs.gov
> *Health and Wellness for all Arizonans*
>
> On Thu, Jul 27, 2023 at 8:52 AM Anakaren Lemus <anakaren.lemus@azdoa.gov> wrote:
>
> > Hi Emily -
> >
> > Please see the attached information sent me in regards to your questions.
> >
> > Thanks.
> >
> > **Anakaren Lemus**
> >
> > Paralegal Project Specialist | Governor's Regulatory Review Council
> >
> > Public Records Manager | ADOA - Director's Office
> >
> > 100 North 15th Avenue, Suite 302, Phoenix, AZ 85007
> > Office: 602.542.2058
> >
> > Anakaren.Lemus@azdoa.gov | http://www.azdoa.gov
> >
> > On Wed, Jul 26, 2023 at 12:24 PM Emily Carey <emily.carey@azdhs.gov> wrote:
> >
> > > Thank you very much!
> > >
> > > **Emily Carey, M.S.**
> > > Senior Rules Analyst, Administrative Counsel & Rules
> > > Arizona Department of Health Services
> > > 150 N 18th Ave, Phoenix, AZ 85007
> > > Direct - 602-542-5121
> > > Email - emily.carey@azdhs.gov
> > > *Health and Wellness for all Arizonans*
> > >
> > > On Wed, Jul 26, 2023 at 12:15 PM Anakaren Lemus <anakaren.lemus@azdoa.gov> wrote:
> > >
> > > > Yes - I have forwarded your questions to Council Member Thorwald.
> > > >
> > > > **Anakaren Lemus**
> > > >
> > > > Paralegal Project Specialist | Governor's Regulatory Review Council

Public Records Manager | ADOA - Director's Office

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On Wed, Jul 26, 2023 at 12:02 PM Emily Carey <emily.carey@azdhs.gov> wrote:

Would it be possible to ask Council Member Thorwald if he could provide us any clarification on what he means by "repurposed medication" and the specific board of pharmacy rules he is referring to?

Thank you,

Emily Carey, M.S.
Senior Rules Analyst, Administrative Counsel & Rules
Arizona Department of Health Services
150 N 18th Ave, Phoenix, AZ 85007
Direct - 602-542-5121
Email - emily.carey@azdhs.gov
Health and Wellness for all Arizonans

On Wed, Jul 26, 2023 at 11:24 AM Emily Carey <emily.carey@azdhs.gov> wrote:

Thank you Anakaren. We will provide a written response prior to next week's meeting!

Emily Carey, M.S.
Senior Rules Analyst, Administrative Counsel & Rules
Arizona Department of Health Services
150 N 18th Ave, Phoenix, AZ 85007
Direct - 602-542-5121
Email - emily.carey@azdhs.gov
Health and Wellness for all Arizonans

On Wed, Jul 26, 2023 at 10:23 AM Anakaren Lemus <anakaren.lemus@azdoa.gov> wrote:

Hi Emily -

Please see below additional questions from Council Member Thorwald regarding the 5YRR heard yesterday.

Thank you.

Anakaren Lemus

Paralegal Project Specialist | Governor's Regulatory Review Council

Public Records Manager | ADOA - Director's Office

100 North 15th Avenue, Suite 302, Phoenix, AZ 85007
Office: 602.542.2058

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---------- Forwarded message ---------

---------- Forwarded message ---------
From: **Frank Thorwald** <FrankThorwald@thorwaldgroup.com>
Date: Tue, Jul 25, 2023 at 8:12 PM

Subject: Additional question for DHS (D2) TITLE 9, CHAPTER 10, TITLE 1
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>
Cc: Frank Thorwald <FrankThorwald@thorwaldgroup.com>

Why are you not incorporating repurposed medication that unanimously approved by the legislature and rules established by the pharmacy board that may save the state millions?

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ARTICLE 1. GENERAL

R9-10-101. Definitions

In addition to the definitions in A.R.S. §§ 36-401(A) and 36-439, the following definitions apply in this Chapter unless otherwise specified:

1. "Abortion clinic" has the same meaning as in A.R.S. § 36-449.01.
2. "Abuse" means:
   a. The same:
      i. For an individual 18 years of age or older, as in A.R.S. § 46-451; and
      ii. For an individual less than 18 years of age, as in A.R.S. § 8-201;
   b. A pattern of ridiculing or demeaning a patient;
   c. Making derogatory remarks or verbally harassing a patient; or
   d. Threatening to inflict physical harm on a patient.
3. "Accredited" has the same meaning as in A.R.S. § 36-422.
4. "Active malignancy" means a cancer for which:
   a. A patient is undergoing treatment, such as through:
      i. One or more surgical procedures to remove the cancer;
      ii. Chemotherapy, as defined in A.A.C. R9-4-401; or
      iii. Radiation treatment, as defined in A.A.C. R9-4-401;
   b. There is no treatment; or
   c. A patient is refusing treatment.
5. "Activities of daily living" means ambulating, bathing, toileting, grooming, eating, and getting in or out of a bed or a chair.
6. "Acuity" means a patient's need for medical services, nursing services, or behavioral health services based on the patient's medical condition or behavioral health issue.
7. "Acuity plan" means a method for establishing nursing personnel requirements by unit based on a patient's acuity.
8. "Adjacent" means not intersected by:
   a. Property owned, operated, or controlled by a person other than the applicant or licensee; or
   b. A public thoroughfare.
9. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
10. "Administrative office" means a location used by personnel for recordkeeping and record retention but not for providing medical services, nursing services, behavioral health services, or health-related services.
11. "Admission" or "admitted" means, after completion of an individual's screening or registration by a health care institution, the individual begins receiving physical health services or behavioral health services and is accepted as a patient of the health care institution.
12. "Adult" has the same meaning as in A.R.S. § 1-215.
13. "Adult behavioral health therapeutic home" means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self-administration of medication, and provides feedback to a case manager related to behavior for an individual 18 years of age or older based on the individual's behavioral health issue and need for behavioral health services and may provide behavioral health services under the clinical oversight of a behavioral health professional.
14. "Adult residential care institution" means a subclass of behavioral health residential facility that only admits residents 18 years of age and older and provides recidivism reduction services.
15. "Adverse reaction" means an unexpected outcome that threatens the health or safety of a patient as a result of a medical service, nursing service, or health-related service provided to the patient.
16. "Affiliated counseling facility" means a counseling facility that shares administrative support with one or more other counseling facilities that operate under the same governing authority.
17. "Affiliated outpatient treatment center" means an outpatient treatment center authorized by the Department to provide behavioral health services that provides administrative support to a counseling facility or counseling facilities that operate under the same governing authority as the outpatient treatment center.
18. "Alternate licensing fee due date" means the last calendar day in a month each year, other than the anniversary date of a facility's health care institution license, by which a licensee is required to pay the applicable fees in R9-10-106.
19. "Ancillary services" means services other than medical services, nursing services, or health-related services provided to a patient.
20. "Anesthesiologist" means a physician granted clinical privileges to administer anesthesia.
21. "Applicant" means a governing authority requesting:
   a. Approval of a health care institution's architectural plans and specifications for construction or modification,
   b. Approval of a modification,
   c. Approval of an alternate licensing fee due date, or
   d. A health care institution license.
22. "Application packet" means the information, documents, and fees required by the Department for the:
   a. Approval of a health care institution's architectural plans and specifications for construction or modification,
   b. Approval of a modification,
   c. Approval of an alternate licensing fee due date, or
   d. Licensing of a health care institution.
23. "Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.
24. "Assistance in the self-administration of medication" means restricting a patient's access to the patient's medication and providing support to the patient while the patient takes the medication to ensure that the medication is taken as ordered.
25. "Attending physician" means a physician designated by a patient to participate in or coordinate the medical services provided to the patient.
26. "Authenticate" means to establish authorship of a document or an entry in a medical record by:
   a. A written signature;
   b. An individual's initials, if the individual's written signature appears on the document or in the medical record;
   c. A rubber-stamp signature; or
   d. An electronic signature code.

27. "Authorized service" means specific medical services, nursing services, behavioral health services, or health-related services provided by a specific health care institution class or subclass for which the health care institution is required to obtain approval from the Department before providing the medical services, nursing services, or health-related services.
28. "Available" means:
    a. For an individual, the ability to be contacted and to provide an immediate response by any means possible;
    b. For equipment and supplies, physically retrievable at a health care institution; and
    c. For a document, retrievable by a health care institution or accessible according to the applicable timeframes in this Chapter.
29. "Behavioral care"
    a. Means limited behavioral health services, provided to a patient whose primary admitting diagnosis is related to the patient's need for physical health services, that include:
        i. Assistance with the patient's psychosocial interactions to manage the patient's behavior that can be performed by an individual without a professional license or certificate including:
            (1) Direction provided by a behavioral health professional, and
            (2) Medication ordered by a medical practitioner or behavioral health professional; or
        ii. Behavioral health services provided by a behavioral health professional on an intermittent basis to address the patient's significant psychological or behavioral response to an identifiable stressor or stressors; and
    b. Does not include court-ordered behavioral health services.
30. "Behavioral health facility" means a behavioral health inpatient facility, a behavioral health residential facility, a substance abuse transitional facility, a behavioral health specialized transitional facility, an outpatient treatment center that only provides behavioral health services, an adult behavioral health therapeutic home, a behavioral health respite home, or a counseling facility.
31. "Behavioral health inpatient facility" means a health care institution that provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
    a. Have a limited or reduced ability to meet the individual's basic physical needs;
    b. Suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality;
    c. Be a danger to self;
    d. Be a danger to others;
    e. Be persistently or acutely disabled, as defined in A.R.S. § 36-501; or
    f. Be gravely disabled.
32. "Behavioral health issue" means an individual's condition related to a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
33. "Behavioral health observation/stabilization services" means crisis services provided, in an outpatient setting, to an individual whose behavior or condition indicates that the individual:
    a. Requires nursing services,
    b. May require medical services, and
    c. May be a danger to others or a danger to self.
34. "Behavioral health paraprofessional" means an individual who is not a behavioral health professional who provides the following services to a patient to address the patient's behavioral health issue:
    a. Under supervision by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under A.R.S. Title 32, Chapter 33; or
    b. Health-related services.
35. "Behavioral health professional" means:
    a. An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
        i. Independently engage in the practice of behavioral health, as defined in A.R.S. § 32-3251; or
        ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health, as defined in A.R.S. § 32-3251, under direct supervision as defined in A.A.C. R4-6-101;
    b. A psychiatrist as defined in A.R.S. § 36-501;
    c. A psychologist as defined in A.R.S. § 32-2061;
    d. A physician;
    e. A behavior analyst as defined in A.R.S. § 32-2091; or
    f. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse; or
    g. A registered nurse with:
        i. A psychiatric-mental health nursing certification, or
        ii. One year of experience providing behavioral health services.
36. "Behavioral health residential facility" means a health care institution that provides treatment to an individual experiencing a behavioral health issue that:
    a. Limits the individual's ability to be independent, or
    b. Causes the individual to require treatment to maintain or enhance independence.
37. "Behavioral health respite home" means a residence where respite care services, which may include assistance in the self-administration of medication, are provided to an individual based on the individual's behavioral health issue and need for behavioral health services.
38. "Behavioral health specialized transitional facility" means a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.
39. "Behavioral health technician" means an individual who is not a behavioral health professional who provides the following services to a patient to address the patient's behavioral health issue:
    a. With clinical oversight by a behavioral health professional, services that, if provided in a setting other than a health care institution, would be required to be provided by an individual licensed under A.R.S. Title 32, Chapter 33; or
    b. Health-related services.

40. "Benzodiazepine" means any one of a class of sedative-hypnotic medications, characterized by a chemical structure that includes a benzene ring linked to a seven-membered ring containing two nitrogen atoms, that are commonly used in the treatment of anxiety.
41. "Biohazardous medical waste" has the same meaning as in A.A.C. R18-13-1401.
42. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
43. "Case manager" means an individual assigned by an entity other than a health care institution to coordinate the physical health services or behavioral health services provided to a patient at the health care institution.
44. "Certification" means, in this Article, a written statement that an item or a system complies with the applicable requirements incorporated by reference in R9-10-104.01.
45. "Certified health physicist" means an individual recognized by the American Board of Health Physics as complying with the health physics criteria and examination requirements established by the American Board of Health Physics.
46. "Change in ownership" means conveyance of the ability to appoint, elect, or otherwise designate a health care institution's governing authority from an owner of the health care institution to another person.
47. "Chief administrative officer" or "administrator" means an individual designated by a governing authority to implement the governing authority's direction in a health care institution.
48. "Clinical laboratory services" means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or impairment of a human being, or for the assessment of the health of a human being, including procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.
49. "Clinical oversight" means:
    a. Monitoring the behavioral health services provided by a behavioral health technician to ensure that the behavioral health technician is providing the behavioral health services according to the health care institution's policies and procedures and, if applicable, a patient's treatment plan;
    b. Providing on-going review of a behavioral health technician's skills and knowledge related to the provision of behavioral health services;
    c. Providing guidance to improve a behavioral health technician's skills and knowledge related to the provision of behavioral health services; and
    d. Recommending training for a behavioral health technician to improve the behavioral health technician's skills and knowledge related to the provision of behavioral health services.
50. "Clinical privileges" means authorization to a medical staff member to provide medical services granted by a governing authority or according to medical staff bylaws.
51. "Collaborating health care institution" means a health care institution licensed to provide outpatient behavioral health services that has a written agreement with an adult behavioral health therapeutic home or a behavioral health respite home to:
    a. Coordinate behavioral health services provided to a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home, and
    b. Work with the provider to ensure a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home receives behavioral health services according to the resident's treatment plan.
52. "Common area" means licensed space in health care institution that is:
    a. Not a resident's bedroom or a residential unit,
    b. Not restricted to use by employees or volunteers of the health care institution, and
    c. Available for use by visitors and other individuals on the premises.
53. "Communicable disease" has the same meaning as in A.R.S. § 36-661.
54. "Conspicuously posted" means placed:
    a. At a location that is visible and accessible; and
    b. Unless otherwise specified in the rules, within the area where the public enters the premises of a health care institution.
55. "Consultation" means an evaluation of a patient requested by a medical staff member or personnel member.
56. "Contracted services" means medical services, nursing services, behavioral health services, health-related services, ancillary services, or environmental services provided according to a documented agreement between a health care institution and the person providing the medical services, nursing services, health-related services, ancillary services, or environmental services.
57. "Contractor" has the same meaning as in A.R.S. § 32-1101.
58. "Controlled substance" has the same meaning as in A.R.S. § 36-2501.
59. "Counseling" has the same meaning as "practice of professional counseling" in A.R.S. § 32-3251.
60. "Counseling facility" means a health care institution that only provides counseling, which may include:
    a. DUI screening, education, or treatment according to the requirements in 9 A.A.C. 20, Article 1; or
    b. Misdemeanor domestic violence offender treatment according to the requirements in 9 A.A.C. 20, Article 2.
61. "Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.
62. "Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.
63. "Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.
64. "Current" means up-to-date, extending to the present time.
65. "Daily living skills" means activities necessary for an individual to live independently and include meal preparation, laundry, house-cleaning, home maintenance, money management, and appropriate social interactions.

66. "Danger to others" has the same meaning as in A.R.S. § 36-501.
67. "Danger to self" has the same meaning as in A.R.S. § 36-501.
68. "Detoxification services" means behavioral health services and medical services provided to an individual to:
    a. Treat the individual's signs or symptoms of withdrawal from alcohol or other drugs, and
    b. Reduce or eliminate the individual's dependence on alcohol or other drugs.
69. "Diagnostic procedure" means a method or process performed to determine whether an individual has a medical condition or behavioral health issue.
70. "Dialysis" means the process of removing dissolved substances from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.
71. "Dialysis services" means medical services, nursing services, and health-related services provided to a patient receiving dialysis.
72. "Dialysis station" means a designated treatment area approved by the Department for use by a patient receiving dialysis or dialysis services.
73. "Dialyzer" means an apparatus containing semi-permeable membranes used as a filter to remove wastes and excess fluid from a patient's blood.
74. "Disaster" means an unexpected occurrence that adversely affects a health care institution's ability to provide services.
75. "Discharge" means a documented termination of services to a patient by a health care institution.
76. "Discharge instructions" means documented information relevant to a patient's medical condition or behavioral health issue provided by a health care institution to the patient or the patient's representative at the time of the patient's discharge.
77. "Discharge planning" means a process of establishing goals and objectives for a patient in preparation for the patient's discharge.
78. "Discharge summary" means a documented brief review of services provided to a patient, current patient status, and reasons for the patient's discharge.
79. "Disinfect" means to clean in order to prevent the growth of or to destroy disease-causing microorganisms.
80. "Documentation" or "documented" means information in written, photographic, electronic, or other permanent form.
81. "Drill" means a response to a planned, simulated event.
82. "Drug" has the same meaning as in A.R.S. § 32-1901.
83. "Electronic" has the same meaning as in A.R.S. § 44-7002.
84. "Electronic signature" has the same meaning as in A.R.S. § 44-7002.
85. "Emergency" means an immediate threat to the life or health of a patient.
86. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
87. "Emergency services" means unscheduled medical services provided in a designated area to an outpatient in an emergency.
88. "End-of-life" means that a patient has a documented life expectancy of six months or less.
89. "Environmental services" means activities such as housekeeping, laundry, facility maintenance, or equipment maintenance.
90. "Equipment" means, in this Article, an apparatus, a device, a machine, or a unit that is required to comply with the specifications incorporated by reference in R9-10-104.01.
91. "Exploitation" has the same meaning as in A.R.S. § 46-451.
92. "Factory-built building" has the same meaning as in A.R.S. § 41-4001.
93. "Family" or "family member" means an individual's spouse, sibling, child, parent, grandparent, or another individual designated by the individual.
94. "Follow-up instructions" means information relevant to a patient's medical condition or behavioral health issue that is provided to the patient, the patient's representative, or a health care institution.
95. "Food services" means the storage, preparation, serving, and cleaning up of food intended for consumption in a health care institution.
96. "Full-time" means 40 hours or more every consecutive seven calendar days.
97. "Garbage" has the same meaning as in A.A.C. R18-13-302.
98. "General consent" means documentation of an agreement from an individual or the individual's representative to receive physical health services to address the individual's medical condition or behavioral health services to address the individual's behavioral health issues.
99. "General hospital" means a subclass of hospital that provides surgical services and emergency services.
100. "Gravely disabled" has the same meaning as "grave disability" in A.R.S. § 36-501.
101. "Habilitation services" means activities provided to an individual to assist the individual with habilitation, as defined in A.R.S. § 36-551.
102. "Hazard" or "hazardous" means a condition or situation where a patient or other individual may suffer physical injury.
103. "Health care directive" has the same meaning as in A.R.S. § 36-3201.
104. "Hemodialysis" means the process for removing wastes and excess fluids from a patient's blood by passing the blood through a dialyzer.
105. "Home health agency" has the same meaning as in A.R.S. § 36-151.
106. "Home health aide" means an individual employed by a home health agency to provide home health services under the direction of a registered nurse or therapist.
107. "Home health aide services" means those tasks that are provided to a patient by a home health aide under the direction of a registered nurse or therapist.
108. "Home health services" has the same meaning as in A.R.S. § 36-151.
109. "Hospice inpatient facility" means a subclass of hospice that provides hospice services to a patient on a continuous basis with the expectation that the patient will remain on the hospice's premises for 24 hours or more.
110. "Hospital" means a class of health care institution that provides, through an organized medical staff, inpatient beds, medical services, continuous nursing services, and diagnosis or treatment to a patient.
111. "Immediate" means without delay.

112. "Incident" means an unexpected occurrence that harms or has the potential to harm a patient, while the patient is:
    a. On the premises of a health care institution, or
    b. Not on the premises of a health care institution but directly receiving physical health services or behavioral health services from a personnel member who is providing the physical health services or behavioral health services on behalf of the health care institution.
113. "Infection control" means to identify, prevent, monitor, and minimize infections.
114. "Infectious tuberculosis" has the same meaning as "infectious active tuberculosis" in A.A.C. R9-6-101.
115. "Informed consent" means:
    a. Advising a patient of a proposed treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure; alternatives to the treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure; and associated risks and possible complications; and
    b. Obtaining documented authorization for the proposed treatment, surgical procedure, psychotropic medication, opioid, or diagnostic procedure from the patient or the patient's representative.
116. "In-service education" means organized instruction or information that is related to physical health services or behavioral health services and that is provided to a medical staff member, personnel member, employee, or volunteer.
117. "Interdisciplinary team" means a group of individuals consisting of a resident's attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident's comprehensive assessment or, if applicable, placement evaluation.
118. "Intermediate care facility for individuals with intellectual disabilities" or "ICF/IID" has the same meaning as in A.R.S. § 36-551.
119. "Interval note" means documentation updating a patient's:
    a. Medical condition after a medical history and physical examination is performed, or
    b. Behavioral health issue after an assessment is performed.
120. "Isolation" means the separation, during the communicable period, of infected individuals from others, to limit the transmission of infectious agents.
121. "Leased facility" means a facility occupied or used during a set time period in exchange for compensation.
122. "License" means:
    a. Written approval issued by the Department to a person to operate a class or subclass of health care institution at a specific location; or
    b. Written approval issued to an individual to practice a profession in this state.
123. "Licensed occupancy" means the total number of individuals for whom a health care institution is authorized by the Department to provide crisis services in a unit providing behavioral health observation/stabilization services.
124. "Licensee" means an owner approved by the Department to operate a health care institution.
125. "Manage" means to implement policies and procedures established by a governing authority, an administrator, or an individual providing direction to a personnel member.
126. "Medical condition" means the state of a patient's physical or mental health, including the patient's illness, injury, or disease.
127. "Medical director" means a physician who is responsible for the coordination of medical services provided to patients in a health care institution.
128. "Medical history" means an account of a patient's health, including past and present illnesses, diseases, or medical conditions.
129. "Medical practitioner" means a physician, physician assistant, or registered nurse practitioner.
130. "Medical record" has the same meaning as "medical records" in A.R.S. § 12-2291.
131. "Medical staff" means physicians and other individuals licensed pursuant to A.R.S. Title 32 who have clinical privileges at a health care institution.
132. "Medical staff bylaws" means standards, approved by the medical staff and the governing authority, that provide the framework for the organization, responsibilities, and self-governance of the medical staff.
133. "Medical staff member" means an individual who is part of the medical staff of a health care institution.
134. "Medication" means one of the following used to maintain health or to prevent or treat a medical condition or behavioral health issue:
    a. Biologicals as defined in A.A.C. R18-13-1401,
    b. Prescription medication as defined in A.R.S. § 32-1901, or
    c. Nonprescription drug as defined in A.R.S. § 32-1901.
135. "Medication administration" means restricting a patient's access to the patient's medication and providing the medication to the patient or applying the medication to the patient's body, as ordered by a medical practitioner.
136. "Medication error" means:
    a. The failure to administer an ordered medication;
    b. The administration of a medication not ordered; or
    c. The administration of a medication:
        i. In an incorrect dosage,
        ii. More than 60 minutes before or after the ordered time of administration unless ordered to do so, or
        iii. By an incorrect route of administration.
137. "Mental disorder" means the same as in A.R.S. § 36-501.
138. "Mobile clinic" means a movable structure that:
    a. Is not physically attached to a health care institution's facility;
    b. Provides medical services, nursing services, behavioral health services, or health related service to an outpatient under the direction of the health care institution's personnel; and
    c. Is not intended to remain in one location indefinitely.
139. "Monitor" or "monitoring" means to check systematically on a specific condition or situation.
140. "Neglect" has the same meaning:
    a. For an individual less than 18 years of age, as in A.R.S. § 8-201; and
    b. For an individual 18 years of age or older, as in A.R.S. § 46-451.
141. "Nephrologist" means a physician who is board eligible or board certified in nephrology by a professional credentialing board.

142. "Nurse" has the same meaning as "registered nurse" or "practical nurse" as defined in A.R.S. § 32-1601.
143. "Nursing care institution administrator" means an individual licensed according to A.R.S. Title 36, Chapter 4, Article 6.
144. "Nursing personnel" means individuals authorized according to A.R.S. Title 32, Chapter 15 to provide nursing services.
145. "Observation chair" means a physical piece of equipment that:
    a. Is located in a designated area where behavioral health observation/stabilization services are provided,
    b. Allows an individual to fully recline, and
    c. Is used by the individual while receiving crisis services.
146. "Occupational therapist" has the same meaning as in A.R.S. § 32-3401.
147. "Occupational therapy assistant" has the same meaning as in A.R.S. § 32-3401.
148. "Ombudsman" means a resident advocate who performs the duties described in A.R.S. § 46-452.02.
149. "On-call" means a time during which an individual is available and required to come to a health care institution when requested by the health care institution.
150. "Opioid" means a controlled substance, as defined in A.R.S. § 36-2501, that meets the definition of "opiate" in A.R.S. § 36-2501.
151. "Opioid agonist treatment medication" means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of opioid-related substance use disorder.
152. "Opioid antagonist" means a prescription medication, as defined in A.R.S. § 32-1901, that:
    a. Is approved by the U.S. Department of Health and Human Services, Food and Drug Administration; and
    b. When administered, reverses, in whole or in part, the pharmacological effects of an opioid in the body.
153. "Opioid treatment" means providing medical services, nursing services, behavioral health services, health-related services, and ancillary services to a patient receiving an opioid agonist treatment medication for opioid-related substance use disorder.
154. "Order" means instructions to provide:
    a. Physical health services to a patient from a medical practitioner or as otherwise provided by law; or
    b. Behavioral health services to a patient from a behavioral health professional.
155. "Orientation" means the initial instruction and information provided to an individual before the individual starts work or volunteer services in a health care institution.
156. "Outing" means a social or recreational activity that:
    a. Occurs away from the premises,
    b. Is not part of a behavioral health inpatient facility's or behavioral health residential facility's daily routine, and
    c. Lasts longer than four hours.
157. "Outpatient surgical center" means a class of health care institution that has the facility, staffing, and equipment to provide surgery and anesthesia services to a patient whose recovery, in the opinions of the patient's surgeon and, if an anesthesiologist would be providing anesthesia services to the patient, the anesthesiologist, does not require inpatient care in a hospital.
158. "Outpatient treatment center" means a class of health care institution without inpatient beds that provides physical health services or behavioral health services for the diagnosis and treatment of patients.
159. "Overall time-frame" means the same as in A.R.S. § 41-1072.
160. "Owner" means a person who appoints, elects, or designates a health care institution's governing authority.
161. "Pain management clinic" has the same meaning as in A.R.S. § 36-448.01.
162. "Participant" means a patient receiving physical health services or behavioral health services from an adult day health care facility or a substance abuse transitional facility.
163. "Participant's representative" means the same as "patient's representative" for a participant.
164. "Patient" means an individual receiving physical health services or behavioral health services from a health care institution.
165. "Patient's representative" means:
    a. A patient's legal guardian;
    b. If a patient is less than 18 years of age and not an emancipated minor, the patient's parent;
    c. If a patient is 18 years of age or older or an emancipated minor, an individual acting on behalf of the patient with the written consent of the patient or patient's legal guardian; or
    d. A surrogate as defined in A.R.S. § 36-3201.
166. "Person" means the same as in A.R.S. § 1-215 and includes a governmental agency.
167. "Personnel member" means, except as defined in specific Articles in this Chapter and excluding a medical staff member, a student, or an intern, an individual providing physical health services or behavioral health services to a patient.
168. "Pest control program" means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient's health and safety is not at risk.
169. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
170. "Physical examination" means to observe, test, or inspect an individual's body to evaluate health or determine cause of illness, injury, or disease.
171. "Physical health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's medical condition.
172. "Physical therapist" has the same meaning as in A.R.S. § 32-2001.
173. "Physical therapist assistant" has the same meaning as in A.R.S. § 32-2001.
174. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
175. "Placement evaluation" means the same as in A.R.S. § 36-551.
176. "Pre-petition screening" has the same meaning as "prepetition screening" in A.R.S. § 36-501.
177. "Premises" means property that is designated by an applicant or licensee and licensed by the Department as part of a health care institution where physical health services or behavioral health services are provided to a patient.

178. "Prescribe" means to issue written or electronic instructions to a pharmacist to deliver to the ultimate user, or another individual on the ultimate user's behalf, a specific dose of a specific medication in a specific quantity and route of administration.
179. "Professional credentialing board" means a non-governmental organization that designates individuals who have met or exceeded established standards for experience and competency in a specific field.
180. "Progress note" means documentation by a medical staff member, nurse, or personnel member of:
    a. An observed patient response to a physical health service or behavioral health service provided to the patient,
    b. A patient's significant change in condition, or
    c. Observed behavior of a patient related to the patient's medical condition or behavioral health issue.
181. "PRN" means *pro re nata* or given as needed.
182. "Project" means specific construction or modification of a facility stated on an architectural plans and specifications approval application.
183. "Provider" means an individual to whom the Department issues a license to operate an adult behavioral health therapeutic home or a behavioral health respite home in the individual's place of residence.
184. "Provisional license" means the Department's written approval to operate a health care institution issued to an applicant or licensee that is not in substantial compliance with the applicable laws and rules for the health care institution.
185. "Psychotropic medication" means a chemical substance that:
    a. Crosses the blood-brain barrier and acts primarily on the central nervous system where it affects brain function, resulting in alterations in perception, mood, consciousness, cognition, and behavior; and
    b. Is provided to a patient to address the patient's behavioral health issue.
186. "Quality management program" means ongoing activities designed and implemented by a health care institution to improve the delivery of medical services, nursing services, health-related services, and ancillary services provided by the health care institution.
187. "Recovery care center" has the same meaning as in A.R.S. § 36-448.51.
188. "Referral" means providing an individual with a list of the class or subclass of health care institution or type of health care professional that may be able to provide the behavioral health services or physical health services that the individual may need and may include the name or names of specific health care institutions or health care professionals.
189. "Registered dietitian" means an individual approved to work as a dietitian by the American Dietetic Association's Commission on Dietetic Registration.
190. "Registered nurse" has the same meaning as in A.R.S. § 32-1601.
191. "Registered nurse practitioner" has the same meaning as A.R.S. § 32-1601.
192. "Regular basis" means at recurring, fixed, or uniform intervals.
193. "Rehabilitation services" means medical services provided to a patient to restore or to optimize functional capability.
194. "Research" means the use of a human subject in the systematic study, observation, or evaluation of factors related to the prevention, assessment, treatment, or understanding of a medical condition or behavioral health issue.
195. "Resident" means an individual living in and receiving physical health services or behavioral health services, including rehabilitation services or habilitation services if applicable, from a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, a behavioral health residential facility, an assisted living facility, or an adult behavioral health therapeutic home.
196. "Resident's representative" means the same as "patient's representative" for a resident.
197. "Respiratory care services" has the same meaning as "practice of respiratory care" as defined in A.R.S. § 32-3501.
198. "Respiratory therapist" has the same meaning as in A.R.S. § 32-3501.
199. "Respite capacity" means the total number of children who do not stay overnight for whom an outpatient treatment center or a behavioral health residential facility is authorized by the Department to provide respite services on the premises of the outpatient treatment center or behavioral health residential facility.
200. "Respite services" means respite care services provided to an individual who is receiving behavioral health services.
201. "Restraint" means any physical or chemical method of restricting a patient's freedom of movement, physical activity, or access to the patient's own body.
202. "Risk" means potential for an adverse outcome.
203. "Room" means space contained by a floor, a ceiling, and walls extending from the floor to the ceiling that has at least one door.
204. "Rural general hospital" means a subclass of hospital:
    a. Having 50 or fewer inpatient beds,
    b. Located more than 20 surface miles from a general hospital or another rural general hospital, and
    c. Requesting to be and being licensed as a rural general hospital rather than a general hospital.
205. "Satellite facility" has the same meaning as in A.R.S. § 36-422.
206. "Scope of services" means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being available to a patient at the health care institution.
207. "Seclusion" means the involuntary solitary confinement of a patient in a room or an area where the patient is prevented from leaving.
208. "Sedative-hypnotic medication" means any one of several classes of drugs that have sleep-inducing, anti-anxiety, anti-convulsant, and muscle-relaxing properties.
209. "Self-administration of medication" means a patient having access to and control of the patient's medication and may include the patient receiving limited support while taking the medication.
210. "Sexual abuse" means the same as in A.R.S. § 13-1404(A).

211. "Sexual assault" means the same as in A.R.S. § 13-1406(A).
212. "Shift" means the beginning and ending time of a continuous work period established by a health care institution's policies and procedures.
213. "Short-acting opioid antagonist" means an opioid antagonist that, when administered, quickly but for a small period of time reverses, in whole or in part, the pharmacological effects of an opioid in the body.
214. "Signature" means:
    a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
    b. An electronic signature.
215. "Significant change" means an observable deterioration or improvement in a patient's physical, cognitive, behavioral, or functional condition that may require an alteration to the physical health services or behavioral health services provided to the patient.
216. "Single group license" means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).
217. "Speech-language pathologist" means an individual licensed according to A.R.S. Title 36, Chapter 17, Article 4 to engage in the practice of speech-language pathology, as defined in A.R.S. § 36-1901.
218. "Special hospital" means a subclass of hospital that:
    a. Is licensed to provide hospital services within a specific branch of medicine; or
    b. Limits admission according to age, gender, type of disease, or medical condition.
219. "Student" means an individual attending an educational institution and working under supervision in a health care institution through an arrangement between the health care institution and the educational institution.
220. "Substance abuse" means an individual's misuse of alcohol or other drug or chemical that:
    a. Alters the individual's behavior or mental functioning;
    b. Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and
    c. Impairs, reduces, or destroys the individual's social or economic functioning.
221. "Substance abuse transitional facility" means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.
222. "Substance use disorder" means a condition in which the misuse or dependence on alcohol or a drug results in adverse physical, mental, or social effects on an individual.
223. "Substance use risk" means an individual's unique likelihood for addiction, misuse, diversion, or another adverse consequence resulting from the individual being prescribed or receiving treatment with opioids.
224. "Substantial" when used in connection with a modification means:
    a. An addition or removal of an authorized service;
    b. The addition or removal of a colocator;
    c. A change in a health care institution's licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;
    d. A change in the physical plant, including facilities or equipment, that costs more than $300,000; or
    e. A change in the building where a health care institution is located that affects compliance with:
        i. Applicable physical plant codes and standards incorporated by reference in R9-10-104.01, or
        ii. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.
225. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
226. "Supportive services" has the same meaning as in A.R.S. § 36-151.
227. "Surgical procedure" means the excision of or incision in a patient's body for the:
    a. Correction of a deformity or defect;
    b. Repair of an injury; or
    c. Diagnosis, amelioration, or cure of disease.
228. "Swimming pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.
229. "System" means interrelated, interacting, or interdependent elements that form a whole.
230. "Tapering" means the gradual reduction in the dosage of a medication administered to a patient, often with the intent of eventually discontinuing the use of the medication for the patient.
231. "Tax ID number" means a numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.
232. "Telemedicine" has the same meaning as in A.R.S. § 36-3601.
233. "Therapeutic diet" means foods or the manner in which food is to be prepared that are ordered for a patient.
234. "Therapist" means an occupational therapist, a physical therapist, a respiratory therapist, or a speech-language pathologist.
235. "Time-out" means providing a patient a voluntary opportunity to regain self-control in a designated area from which the patient is not physically prevented from leaving.
236. "Transfer" means a health care institution discharging a patient and sending the patient to another licensed health care institution as an inpatient or resident without intending that the patient be returned to the sending health care institution.
237. "Transport" means a licensed health care institution:
    a. Sending a patient to a receiving licensed health care institution for outpatient services with the intent of the patient returning to the sending licensed health care institution, or
    b. Discharging a patient to return to a sending licensed health care institution after the patient received outpatient services from the receiving licensed health care institution.
238. "Treatment" means a procedure or method to cure, improve, or palliate an individual's medical condition or behavioral health issue.
239. "Treatment plan" means a description of the specific physical health services or behavioral health services that a health care institution anticipates providing to a patient.
240. "Unclassified health care institution" means a health care institution not classified or subclassified in statute or in rule.

241. "Vascular access" means the point on a patient's body where blood lines are connected for hemodialysis.
242. "Volunteer" means an individual authorized by a health care institution to work for the health care institution on a regular basis without compensation from the health care institution and does not include a medical staff member who has clinical privileges at the health care institution.
243. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-102. Health Care Institution Classes and Subclasses; Requirements

A. A person may apply for a license as one of the following classes or subclasses of health care institution:
1. General hospital,
2. Rural general hospital,
3. Special hospital,
4. Behavioral health inpatient facility,
5. Nursing care institution,
6. Intermediate care facility for individuals with intellectual disabilities,
7. Recovery care center,
8. Hospice inpatient facility,
9. Hospice service agency,
10. Behavioral health residential facility,
11. Adult residential care institution,
12. Assisted living center,
13. Assisted living home,
14. Adult foster care home,
15. Outpatient surgical center,
16. Outpatient treatment center,
17. Abortion clinic,
18. Adult day health care facility,
19. Home health agency,
20. Substance abuse transitional facility,
21. Behavioral health specialized transitional facility,
22. Counseling facility,
23. Adult behavioral health therapeutic home,
24. Behavioral health respite home,
25. Unclassified health care institution,
26. Pain management clinic, or
27. Nursing-supported group home.

B. A person shall apply for a license for the class or subclass that authorizes the provision of the highest level of physical health services or behavioral health services the proposed health care institution plans to provide.

C. The Department shall review a proposed health care institution's scope of services to determine whether the requested health care institution class or subclass is appropriate.

D. A health care institution shall comply with the requirements in Article 17 of this Chapter if:
1. There are no specific rules in another Article of this Chapter for the health care institution's class or subclass, or
2. The Department determines that the health care institution is an unclassified health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-103. Licensing Exceptions

A. A health care institution license is required for each health care institution facility except:
1. A facility exempt from licensing under A.R.S. § 36-402, or
2. A health care institution's administrative office.

B. The Department does not require a separate health care institution license for:
1. A satellite facility of a hospital under A.R.S. § 36-422(F);
2. An accredited facility of an accredited hospital under A.R.S. § 36-422(G);
3. A facility operated by a licensed health care institution that is:
   a. Adjacent to and contiguous with the licensed health care institution premises; or
   b. Not adjacent to or contiguous with the licensed health care institution but connected to the licensed health care institution facility by an all-weather enclosure and:
      i. Owned by the health care institution, or
      ii. Leased by the health care institution with exclusive rights of possession;
4. A mobile clinic operated by a licensed health care institution; or
5. A facility located on grounds that are not adjacent to or contiguous with the health care institution premises where only ancillary services are provided to a patient of the health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-104. Approval of Architectural Plans and Specifications

A. For approval of architectural plans and specifications for the construction or modification of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01, an applicant shall submit to the Department an application packet including:

1. An application in a Department-provided format that contains:
   a. For construction of a new health care institution:
      i. The health care institution's name, street address, city, state, zip code, telephone number, and e-mail address;
      ii. The name and mailing address of the health care institution's governing authority;
      iii. The requested health care institution class or subclass; and
      iv. If applicable, the requested licensed capacity, licensed occupancy, respite capacity, and number of dialysis stations for the health care institution;
   b. For modification of a licensed health care institution that requires approval of architectural plans and specifications:
      i. The health care institution's license number,
      ii. The name and mailing address of the licensee,
      iii. The health care institution's class or subclass, and
      iv. The health care institution's existing licensed capacity, licensed occupancy, respite capacity, or number of dialysis stations; and the requested licensed capacity, licensed occupancy, respite capacity, or number of dialysis stations for the health care institution;
   c. The health care institution's contact person's name, street mailing address, city, state, zip code, telephone number, and e-mail address;
   d. The name, street mailing address, city, state, zip code, telephone number, and e-mail address of:
      i. The project architect; or
      ii. If the construction or modification of the health care institution does not require a project architect, the project engineer or other individual responsible for the completion of the construction or modification;
   e. A narrative description of the project;
   f. The estimated total project cost including the costs of:
      i. Site acquisition,
      ii. General construction,
      iii. Architect fees,
      iv. Fixed equipment, and
      v. Movable equipment;
   g. If providing or planning to provide medical services, nursing services, or health-related services that require compliance with specific physical plant codes and standards incorporated by reference in R9-10-104.01, the number of rooms or inpatient beds designated for providing the medical services, nursing services, or health-related services;
   h. If providing or planning to provide behavioral health observation/stabilization services, the number of behavioral health observation/stabilization observation chairs designated for providing the behavioral health observation/stabilization services;
   i. For construction of a new health care institution and if modification of a health care institution requires a project architect, a statement signed and sealed by the project architect, according to the requirements in 4 A.A.C. 30, Article 3, that the:
      i. Project architect has complied with A.A.C. R4-30-301; and
      ii. Architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;
   j. If construction or modification of a health care institution requires a project engineer, a statement signed and sealed by the project engineer, according to the requirements in 4 A.A.C. 30, Article 3, that the project engineer has complied with A.A.C. R4-30-301; and
   k. A statement signed by the governing authority or the licensee that the architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;
2. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following:
   a. A building permit for the construction or modification issued by the local governmental agency; or
   b. If a building permit issued by the local governmental agency is not required, zoning clearance issued by the local governmental agency that includes:
      i. The health care institution's name, street address, city, state, zip code, and county;
      ii. The health care institution's class or subclass and each type of medical services, nursing services, or health-related services to be provided; and
      iii. A statement signed by a representative of the local governmental agency stating that the address listed is zoned for the health care institution's class or subclass;
3. The following information that is as necessary to demonstrate that the project described on the application complies with applicable codes and standards incorporated by reference in R9-10-104.01:
   a. A table of contents containing:
      i. The architectural plans and specifications submitted;
      ii. The physical plant codes and standards incorporated by reference in R9-10-104.01 that apply to the project;
      iii. The physical plant codes and standards that are required by a local governmental agency, if applicable;
      iv. An index of the abbreviations and symbols used in the architectural plans and specifications; and
      v. The facility's specific International Building Code construction type and International Building Code occupancy type;
   b. If the facility is larger than 3,000 square feet and is or will be occupied by more than 20 individuals, the seal of an architect on the architectural plans and specifications according to the requirements in

A.R.S. Title 32, Chapter 1 and 4 A.A.C. 30, Article 3;

c. A site plan, drawn to scale, of the entire premises showing streets, property lines, facilities, parking areas, outdoor areas, fences, swimming pools, fire access roads, fire hydrants, and access to water mains;

d. For each facility, on architectural plans and specifications:

i. A floor plan, drawn to scale, for each level of the facility, showing the layout and dimensions of each room, the name and function of each room, means of egress, and natural and artificial lighting sources;

ii. A diagram of a section of the facility, drawn to scale, showing the vertical cross-section view from foundation to roof and specifying construction materials;

iii. Building elevations, drawn to scale, showing the outside appearance of each facility;

iv. The materials used for ceilings, walls, and floors;

v. The location, size, and fire rating of each door and each window and the materials and hardware used, including safety features such as fire exit door hardware and fireproofing materials;

vi. A ceiling plan, drawn to scale, showing the layout of each light fixture, each fire protection device, and each element of the mechanical ventilation system;

vii. An electrical floor plan, drawn to scale, showing the wiring diagram and the layout of each lighting fixture, each outlet, each switch, each electrical panel, and electrical equipment;

viii. A mechanical floor plan, drawn to scale, showing the layout of heating, ventilation, and air conditioning systems;

ix. A plumbing floor plan, drawn to scale, showing the layout and materials used for water, sewer, and medical gas systems, including the water supply and plumbing fixtures;

x. A floor plan, drawn to scale, showing the communication system within the health care institution including the nurse call system, if applicable;

xi. A floor plan, drawn to scale, showing the automatic fire extinguishing, fire detection, and fire alarm systems; and

xii. Technical specifications or drawings describing installation of equipment or medical gas and the materials used for installation in the health care institution;

4. The estimated total project cost including the costs of:
   a. Site acquisition,
   b. General construction,
   c. Architect fees,
   d. Fixed equipment, and
   e. Movable equipment;
5. The following, as applicable:
   a. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following provided by the local governmental agency:
      i. A copy of the certificate of occupancy for the facility,
      ii. Documentation that the facility was approved for occupancy, or
      iii. Documentation that a certificate of occupancy for the facility is not available;
   b. A certification and a statement that the construction or modification of the facility is in substantial compliance with applicable licensing requirements in A.R.S. Title 36, Article 4 and this Chapter signed by the project architect, the contractor, and the owner;
   c. A written description of any work necessary to complete the construction or modification submitted by the project architect;
   d. If the construction or modification affects the health care institution's fire alarm system, a contractor certification and description of the fire alarm system in a Department-provided format provided by the Department;
   e. If the construction or modification affects the health care institution's automatic fire extinguishing system, a contractor certification of the automatic fire extinguishing system in a Department-provided format provided by the Department;
   f. If the construction or modification affects the health care institution's heating, ventilation, or air conditioning system, a copy of the heating, ventilation, air conditioning, and air balance tests and a contractor certification of the heating, ventilation, or air conditioning system;
   g. If draperies, cubicle curtains, or floor coverings are installed or replaced, a copy of the manufacturer's certification of flame spread for the draperies, cubicle curtains, or floor coverings;
   h. For a health care institution using inhalation anesthetics or nonflammable medical gas, a copy of the Compliance Certification for Inhalation Anesthetics or Nonflammable Medical Gas System required in the National Fire Codes incorporated by reference in R9-10-104.01;
   i. If a generator is installed, a copy of the installation acceptance required in the National Fire Codes incorporated by reference in R9-10-104.01;
   j. If equipment is installed, a certification from an engineer or from a technical representative of the equipment's manufacturer that the equipment has been installed according to the manufacturer's recommendations and, if applicable, calibrated;
   k. For a health care institution providing radiology, a written report from a certified health physicist of the location, type, and amount of radiation protection; and
   l. If a factory-built building is used by a health care institution:
      i. A copy of the installation permit and the copy of a certificate of occupancy for the factory-built building from the Office of Manufactured Housing; or
      ii. A written report from an individual registered as an architect or a professional structural engineer under 4 A.A.C. 30, Article 2, stating that the factory-built building complies with applicable design standards;

6. For construction of a new health care institution and for a modification of a health care institution that requires a project architect, a statement signed by the project architect that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution;
7. For modification of a health care institution that does not require a project architect, a statement signed by the project engineer or other individual responsible for the completion of the modification that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution; and
8. The applicable fee required by R9-10-106.

B. Before an applicant submits an application for approval of architectural plans and specifications for the construction or modification of a health care institution, an applicant may request an architectural evaluation by providing the documents in subsection (A)(3) to the Department.

C. The Department may conduct on-site facility reviews during the construction or modification of a health care institution.

D. The Department shall approve or deny an application for approval of architectural plans and specifications of a health care institution in this Section according to R9-10-108.

E. In addition to obtaining an approval of a health care institution's architectural plans and specifications, a person shall obtain a health care institution license before operating the health care institution.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4). Publication error corrected in R9-10-104(A)(1) removing "provided by the Department;" publication error corrected in R9-10-104(B) removing "submitting;" with both amendments made at 25 A.A.R. 1583. Publication error corrected in R9-10-104(A), incorporated by reference Section updated as amended at 25 A.A.R. 3481 (Supp. 21-2).

R9-10-104.01. Codes and Standards

A. For a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in this Section, an applicant shall follow the requirements in subsection (B), except as follows:
1. Physical plant standards specified in applicable Articles of this Chapter shall govern over the codes and standards incorporated by reference in subsection (B); and
2. If a conflict occurs among the codes and standards incorporated by reference in subsection (B), the more restrictive codes and standards shall govern over the less restrictive.

B. The following physical plant health and safety codes and standards are incorporated by reference as modified, are on file with the Department, and include no future editions or amendments:
1. Guidelines for Design and Construction of Health Care Facilities (2018 ed.), published by the American Society for Healthcare Engineering and available from The Facility Guidelines Institute at www.fgiguidelines.org;
2. The following National Fire Codes (2012), published by and available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, and at www.nfpa.org/catalog:
   a. NFPA70 National Electrical Code,
   b. NFPA101 Life Safety Code, and
   c. 2012 Supplements;
3. ICC/A117.1-2017, American National Standard: Accessible and Usable Buildings and Facilities (2017), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org;
4. International Building Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]";
   b. Section 101.2 is modified by deleting the "Exception";
   c. Section 101.4.7 is deleted;
   d. Sections 103.1 through 103.3 are deleted;
   e. Sections 104.1 through 104.11.2 are deleted;
   f. Sections 105.1 through 105.7 are deleted;
   g. Sections 106.1 through 106.3 are deleted;
   h. Sections 107.1 through 107.5 are deleted;
   i. Sections 108.1 through 108.4 are deleted;
   j. Sections 109.1 through 109.6 are deleted;
   k. Sections 110.1 through 110.6 are deleted;
   l. Sections 111.1 through 111.4 are deleted;
   m. Sections 112.1 through 112.3 are deleted;
   n. Sections 113.1 through 113.3 are deleted;
   o. Sections 114.1 through 114.4 are deleted;
   p. Sections 115.1 through 115.3 are deleted;
   q. Sections 116.1 through 116.5 are deleted; and
   r. Appendices A, B, C, D, K, L, and M are deleted;
5. International Mechanical Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
   b. Sections 103.1 through 103.4.1 are deleted,
   c. Sections 104.1 through 104.7 are deleted,
   d. Sections 105.1 through 105.5 are deleted,
   e. Sections 106.1 through 106.5.3 are deleted,
   f. Sections 107.1 through 107.6 are deleted,
   g. Sections 108.1 through 108.7.3 are deleted,
   h. Sections 109.1 through 109.7 are deleted,
   i. Sections 110.1 through 110.4 are deleted, and
   j. Appendix B is deleted;
6. International Plumbing Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",

b. Sections 103.1 through 103.4.1 are deleted,
c. Sections 104.1 through 104.7 are deleted,
d. Sections 105.1 through 105.4.1 are deleted,
e. Sections 106.1 through 106.6.3 are deleted,
f. Sections 107.1 through 107.7 are deleted,
g. Sections 108.1 through 108.7.3 are deleted,
h. Sections 109.1 through 109.7 are deleted,
i. Sections 110.1 through 110.4 are deleted, and
j. Appendix A is deleted;

7. International Fire Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
   b. Sections 102.3 and 102.5 are deleted,
   c. Sections 103.1 through 103.4.1 are deleted,
   d. Sections 104.1 through 104.11.3 are deleted,
   e. Sections 105.1 through 105.7.25 are deleted,
   f. Sections 106.1 through 106.5 are deleted,
   g. Sections 107.1 through 107.4 are deleted,
   h. Sections 109.1 through 109.3 are deleted,
   i. Sections 110.1 through 110.4.1 are deleted,
   j. Sections 111.1 through 111.4 are deleted,
   k. Section 112.1 through 112.4 is deleted,
   l. Section 113.1.is deleted, and
   m. Appendix A is deleted;
8. International Fuel Gas Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
   b. Section 101.2 is modified by deleting the "Exception",
   c. Sections 103.1 through 103.4.1 are deleted,
   d. Sections 104.1 through 104.7 are deleted,
   e. Sections 105.1 through 105.5 are deleted,
   f. Sections 106.1 through 106.6.3 are deleted,
   g. Sections 107.1 through 107.6 are deleted,
   h. Sections 108.1 through 108.7.3 are deleted,
   i. Sections 109.1 through 109.7 are deleted, and
   j. Sections 110.1 through 110.4 are deleted;
9. International Private Sewage Disposal Code (2018), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, and at www.iccsafe.org, with the following modifications:
   a. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]",
   b. Sections 103.1 through 103.4.1 are deleted,
   c. Sections 104.1 through 104.7 are deleted,
   d. Sections 105.1 through 105.5 are deleted,
   e. Sections 106.1 through 106.4.3 are deleted,
   f. Sections 107.1 through 107.9 are deleted,
   g. Sections 108.1 through 108.7.2 are deleted,
   h. Sections 109.1 through 109.7 are deleted, and
   i. Sections 110.1 through 110.4 are deleted.

C. The Department shall not assess any penalty or fee specified in the physical plant health and safety codes and standards that are incorporated by reference in this Section.

Historical Note
New Section made by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-105. License Application

A. A person applying for an initial a health care institution license shall submit to the Department an application packet that contains:
1. An application in a Department-provided format provided by the Department including:
   a. The health care institution's:
      i. Name;
      ii. Street address, city, state, zip code;
      iii. Mailing address;
      iv. Telephone number, and;
      v. E-mail address;
      vi. Tax ID number; and
      vii. Class or subclass listed in R9-10-102 for which licensing is requested;
   b. Except for a home health agency, or hospice service agency, or behavioral health facility, whether the health care institution is located within 1/4 mile of agricultural land;
   c. Whether the health care institution is located in a leased facility;
   d. Whether the health care institution is ready for a licensing inspection by the Department;
   e. If the health care institution is not ready for a licensing inspection by the Department, the date the health care institution will be ready for a licensing inspection;
   f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-10-108;
   g. Owner information including:
      i. The owner's name, mailing address, telephone number, and e-mail address;
      ii. Whether the owner is a sole proprietorship, a corporation, a partnership, a limited liability partnership, a limited liability company, or a governmental agency;
      iii. If the owner is a partnership or a limited liability partnership, the name of each partner;
      iv. If the owner is a limited liability company, the name of the designated manager or, if no manager is designated, the names of any two members of the limited liability company;
      v. If the owner is a corporation, the name and title of each corporate officer;
      vi. If the owner is a governmental agency, the name and title of the individual in charge of the governmental agency or the name of an individual in charge of the health care institution designated in writing by the individual in charge of the governmental agency;
      vii. Whether the owner or any person with 10% or more business interest in the health care institution has had a license to operate a health care institution denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license;

viii. Whether the owner or any person with 10% or more business interest in the health care institution has had a health care professional license or certificate denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license or certificate; and

ix. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;

h. The name and mailing address of the governing authority;

i. The chief administrative officer's:

i. Name,

ii. Title,

iii. Highest educational degree, and

iv. Work experience related to the health care institution class or subclass for which licensing is requested; and

j. Signature required in A.R.S. § 36-422(B);

2. If the health care institution is located in a leased facility, a copy of the lease showing the rights and responsibilities of the parties and exclusive rights of possession of the leased facility;

3. If applicable, a copy of the owner's articles of incorporation, partnership or joint venture documents, or limited liability documents;

4. If applicable, the name and mailing address of each owner or lessee of any agricultural land regulated under A.R.S. § 3-365 and a copy of the written agreement between the applicant and the owner or lessee of agricultural land as prescribed in A.R.S. § 36-421(D);

5. Except for a home health agency or a hospice service agency, one of the following:

a. If the health care institution or a part of the health care institution is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01:

i. An application packet for approval of architectural plans and specifications in R9-10-104(A), or

ii. Documentation of the Department's approval of the health care institution's architectural plans and specifications approval in R9-10-104 R9-10-104(D); or

b. If a no part of the health care institution or a part of the health care institution is not required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01:

i. One of the following:

(1) Documentation from the local jurisdiction of compliance with applicable local building codes and zoning ordinances; or

(2) If documentation from the local jurisdiction is not available, documentation of the unavailability of the local jurisdiction compliance and documentation of a general contractor's inspection of the facility that states the facility is safe for occupancy as the applicable health care institution class or subclass;

ii. The licensed capacity requested by the applicant for the health care institution;

iii. If applicable, the licensed occupancy requested by the applicant for the health care institution;

iv. If applicable, the respite capacity requested by the applicant for the health care institution;

v. A site plan showing each facility, the property lines of the health care institution, each street and walkway adjacent to the health care institution, parking for the health care institution, fencing and each gate on the health care institution premises, and, if applicable, each swimming pool on the health care institution premises; and

vi. A floor plan showing, for each story of a facility, the room layout, room usage, each door and each window, plumbing fixtures, each exit, and the location of each fire protection device;

6. The health care institution's proposed scope of services; and

7. The applicable application fee required by R9-10-106.

B. In addition to the initial license application requirements in this Section, an applicant shall comply with the supplemental application requirements in specific rules in this Chapter for the health care institution class or subclass for which licensing is requested.

C. The Department shall approve or deny a license application in this Section according to R9-10-108.

D. A health care institution license is valid:

1. Unless, as specified in A.R.S. § 36-425(C):

a. The Department revokes or suspends the license according to R9-10-112, or

b. The license is considered void because the licensee did not pay the applicable fees in R9-10-106 according to R9-10-107; or

2. Until a licensee voluntarily surrenders the license to the Department when terminating the operation of the health care institution, according to R9-10-109(B).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-106. Fees

A. An applicant who submits to the Department architectural plans and specifications for the construction or modification of a health care institution shall also submit an architectural plans and specifications review fee as follows:

1. Fifty dollars for a project with a cost of $100,000 or less;

2. One hundred dollars for a project with a cost of more than $100,000 but less than $500,000; or

3. One hundred fifty dollars for a project with a cost of $500,000 or more.

B. An applicant submitting an application for a health care institution license shall submit to the Department an application fee of $50.

C. Except as provided in subsection (D) or (E), an applicant submitting an application for a health care institution license or a licensee submitting annual health care institution licensing fees shall submit to the Department the following licensing fee:
1. For an adult day health care facility, assisted living home, or assisted living center:
   a. For a facility with no licensed capacity, $280;
   b. For a facility with a licensed capacity of one to 59 beds, $280, plus the licensed capacity times $70;
   c. For a facility with a licensed capacity of 60 to 99 beds, $560, plus the licensed capacity times $70;
   d. For a facility with a licensed capacity of 100 to 149 beds, $840, plus the licensed capacity times $70; or
   e. For a facility with a licensed capacity of 150 beds or more, $1,400, plus the licensed capacity times $70;
2. For a behavioral health facility:
   a. For a facility with no licensed capacity, $375;
   b. For a facility with a licensed capacity of one to 59 beds, $375, plus the licensed capacity times $94;
   c. For a facility with a licensed capacity of 60 to 99 beds, $750, plus the licensed capacity times $94;
   d. For a facility with a licensed capacity of 100 to 149 beds, $1,125, plus the licensed capacity times $94; or
   e. For a facility with a licensed capacity of 150 beds or more, $1,875, plus the licensed capacity times $94;
3. For a behavioral health facility providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(2), the licensed occupancy times $94;
4. For a nursing care institution, an intermediate care facility for individuals with intellectual disabilities, or a nursing-supported group home:
   a. For a facility with a licensed capacity of one to 59 beds, $290, plus the licensed capacity times $73;
   b. For a facility with a licensed capacity of 60 to 99 beds, $580, plus the licensed capacity times $73;
   c. For a facility with a licensed capacity of 100 to 149 beds, $870, plus the licensed capacity times $73; or
   d. For a facility with a licensed capacity of 150 beds or more, $1,450, plus the licensed capacity times $73;
5. For a hospital, a home health agency, a hospice service agency, a hospice inpatient facility, an abortion clinic, a recovery care center, an outpatient surgical center, an outpatient treatment center that is not a behavioral health facility, a pain management clinic, or an unclassified health care institution:
   a. For a facility with no licensed capacity, $365;
   b. For a facility with a licensed capacity of one to 59 beds, $365, plus the licensed capacity times $91;
   c. For a facility with a licensed capacity of 60 to 99 beds, $730, plus the licensed capacity times $91;
   d. For a facility with a licensed capacity of 100 to 149 beds, $1,095, plus the licensed capacity times $91; or
   e. For a facility with a licensed capacity of 150 beds or more, $1,825, plus the licensed capacity times $91;
6. For a hospital providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times $91; and
7. For an outpatient treatment center that is not a behavioral health facility and provides:
   a. Dialysis services, in addition to the applicable fee in subsection (C)(5), the number of dialysis stations times $91; and
   b. Behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times $91.

D. In addition to the applicable fees in subsections (C)(5) and (C)(6), an applicant submitting an application for a single group hospital license or a licensee with a single group license submitting annual health care institution licensing fees shall submit to the Department an additional fee of $365 for each of the hospital's satellite facilities and, if applicable, the fees required in subsection (C)(7).

E. Subsections (C) and (D) do not apply to a health care institution operated by a state agency according to state or federal law or to an adult foster care home.

F. In addition to the applicable fees in subsections (C) and (D), a licensee shall submit a late payment fee of $250 if submitting annual licensing fees according to R9-10-107(E)(1) or (2)(d).

G. All fees are nonrefundable except as provided in A.R.S. § 41-1077.

Historical Note

New Section R9-10-106 renumbered from R9-10-122 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 1222, effective April 25, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by exempt rulemaking at 28 A.A.R. 927 (May 6, 2022), with an immediate effective date of April 15, 2022 (Supp. 22-2).

R9-10-107. Submission of Health Care Institution Licensing Fees

A. An applicant for a health care institution license shall submit the applicable licensing fees in R9-10-106 to the Department:
1. Within 60 calendar days after the date of the written notice of approval in R9-10-108(C)(3); or
2. Within 90 calendar days after the date of the written notice of approval in R9-10-108(C)(3), with the payment of an additional late payment fee of $250.

B. The Department shall notify a licensee of the due date of the facility's health care institution licensing fees no later than 90 calendar days before the date the facility's health care institution licensing fee is due to the Department.

C. Except as specified in subsection (E), a licensee shall submit to the Department, no earlier than 60 calendar days before the anniversary date of the facility's health care institution license:
1. The following information in a Department-provided format:
   a. The licensee's name, and
   b. The facility's name and license number;
2. Verification of the information in the Department's current records for the health care institution;
3. If applicable, information or documentation required in another Article of this Chapter, specific to the health care institution, to be submitted with the relevant fees required in R9-10-106; and
4. The applicable annual licensing fees in R9-10-106.

D. If any information in the Department's current records for a health care institution is incorrect, before a licensee submits annual licensing fees according to subsection (C), the licensee shall comply with the applicable requirements in R9-10-109 or R9-10-110 to update the Department's records for the health care institution.

E. A licensee may submit to the Department the information in subsection (C)(1), verification in subsection (C)(2), applicable information or documentation in subsection (C)(3), and applicable annual licensing fees in R9-10-106:

1. Within 30 calendar days after the anniversary date of the facility's health care institution license, with the payment of the additional late payment fee in R9-10-106(F); or
2. If an alternate licensing fee due date has been established for the licensee according to subsections (F) and (G):
   a. By the anniversary date of the facility's health care institution license, with the appropriate fee amount to prorate the annual licensing fees in R9-10-106 for a facility to the alternate licensing fee due date;
   b. By the alternate licensing fee due date;
   c. If a new alternate licensing fee due date has been established, by the current alternate licensing fee due date, with the appropriate fee amount to prorate the annual licensing fees in R9-10-106 for a facility to the new alternate licensing fee due date; or
   d. Within 30 calendar days after the alternate licensing fee due date, with the payment of the additional late payment fee in R9-10-106(F).

F. Except as specified in subsection (H), a licensee may request a licensing fee due date for a facility that is different from the anniversary date of a facility's health care institution license by submitting an application for an alternate licensing fee due date to the Department, at least 30 calendar days before the anniversary date of the facility's health care institution license, that includes the following information in a Department-provided format:

1. The licensee's name and e-mail address,
2. The facility's name and license number,
3. The current licensing fee due date,
4. The proposed alternate licensing fee due date,
5. The reason the licensee is requesting an alternate licensing fee due date, and
6. The name of the health care institution's administrator's or individual representing the health care institution as designated in A.R.S. § 36-422 and the dated signature of the administrator or individual.

G. The Department shall review a request made according to subsection (F) according to R9-10-108.

H. A licensee may not request an alternate licensing fee due date according to subsection (F):

1. More frequently than once in each three-year period, or
2. For a facility for which the payment of licensing fees is not up-to-date.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-108. Time-frames

A. The overall time-frame for each type of approval granted by the Department is listed in Table 1.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.

B. The administrative completeness review time-frame for each type of approval granted by the Department as prescribed in this Article is listed in Table 1.1. The administrative completeness review time-frame begins on the date the Department receives an application packet or a written request for an alternate licensing fee due date.

1. The application packet for a health care institution license is not complete until the applicant provides the Department with written notice that the health care institution is ready for a licensing inspection by the Department.
2. If the application packet or written request is incomplete, the Department shall provide a written notice to the applicant specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the missing document or information from the applicant.
3. When an application packet or written request is complete, the Department shall provide a written notice of administrative completeness to the applicant.
4. For an application packet for review of architectural plans and specifications, a health care institution license application packet, an application packet for a modification not requiring review of architectural plans and specifications, or a written request for an alternate licensing fee due date, the Department shall consider the application or written request withdrawn if the applicant fails to supply the missing documents or information included in the notice described in subsection (B)(2) within 60 calendar days after the date of the notice described in subsection (B)(2).
5. If the Department issues a license or grants an approval during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame is listed in Table 1.1 and begins on the date of the notice of administrative completeness.

1. The Department may conduct an onsite inspection of the facility:
   a. As part of the substantive review for approval of architectural plans and specifications;
   b. As part of the substantive review for issuing a health care institution license; or
   c. As part of the substantive review for approving a modification of a health care institution's license.
2. During the substantive review time-frame, the Department may make one comprehensive written request for additional information or documentation. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation. The time-frame for the Department to complete the substantive review is suspended from the date of a written request for additional information or documentation until the Department receives the additional information or documentation.

3. The Department shall send a written notice of approval to an applicant that is in substantial compliance with applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter.
4. After an applicant for a health care institution license receives the written notice of approval in subsection (C)(3), the applicant shall submit the applicable health care institution license fee in R9-10-106 according to R9-10-107(A).
5. After receiving the applicable health care institution licensing fee from an applicant according to subsection (C)(4) and R9-10-107(A), the Department shall send a health care institution license to the applicant.
6. The Department shall provide a written notice of denial that complies with A.R.S. § 41-1076 to an applicant who does not:
   a. For a health care institution license application or a request for approval of a modification of a health care institution requiring architectural plans and specifications, submit the information or documentation in subsection (C)(2) within 120 calendar days after the Department's written request to the applicant;
   b. For a request for approval of a modification of a health care institution not requiring architectural plans and specifications or a written request for an alternate licensing fee due date, submit the information or documentation in subsection (C)(2) within 30 calendar days after the Department's written request to the applicant;
   c. Comply with the applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter; or
   d. If applicable, submit a fee required in R9-10-106 or R9-10-107.
7. An applicant may file a written notice of appeal with the Department within 30 calendar days after receiving the notice described in subsection (C)(6). The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.
8. If a time-frame's last day falls on a Saturday, a Sunday, or an official state holiday, the Department shall consider the next working day to be the time-frame's last day.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 859, effective April 2, 2005 (Supp. 05-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

Table 1.1 Time-frames

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval of architectural plans and specifications R9-10-104	A.R.S. §§ 36-405, 36-406(1)(b), and 36-421	105 calendar days	45 calendar days	60 calendar days
Health care institution license R9-10-105	A.R.S. §§ 36-405, 36-407, 36-421, 36-422, 36-424, and 36-425	120 calendar days	30 calendar days	90 calendar days
Approval of an alternate licensing fee due date R9-10-107	A.R.S. § 36-405	30 calendar days	10 calendar days	20 calendar days
Approval of a modification of a health care institution R9-10-110	A.R.S. §§ 36-405, 36-407, and 36-422	75 calendar days	15 calendar days	60 calendar days

Historical Note

New Table 1 made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 859, effective April 2, 2005 (Supp. 05-1). Table 1 number amended to Table 1.1 and contents amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Table 1.1 amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Table 1.1 amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Table 1.1 heading added for clarity by the Division (21-2).

R9-10-109. Changes Affecting a License

A. A licensee shall ensure that:
1. The Department is notified in writing at least 30 calendar days before the effective date of:
   a. Except as provided in subsection (I), a change in the name of:
      i. A health care institution, or
      ii. The licensee;
   b. A change in the hours of operation:
      i. Of an administrative office, or
      ii. For providing physical health services or behavioral health services to patients of the health care institution;
   c. A change in the address of a health care institution that does not provide medical services, nursing services, behavioral health services, or health-related services on the premises; or

d. A change in the geographic region to be served by the hospice service agency or home health agency; and

2. Documentation supporting the change is provided to the Department with the notification required in subsection (A)(1).

B. If a licensee intends to terminate the operation of a health care institution, the licensee shall ensure that the Department is notified in writing of:

1. The termination of the health care institution's operations, as required in A.R.S. § 36-422(D), at least 30 calendar days before the termination, and
2. The address and contact information for the location where the health care institution's medical records will be retained as required in A.R.S. § 12-2297.

C. A licensee shall ensure that the Department is notified in writing, according to A.R.S. § 36-425(I), of a change in the chief administrative officer of the health care institution.

D. If a health care institution is accredited by a nationally recognized accrediting organization, a licensee may submit to the Department the health care institution's current accreditation report.

E. Except as provided in A.R.S. § 36-424(B), if a licensee submits to the Department a health care institution's current accreditation report from a nationally recognized accrediting organization, the Department shall not conduct an onsite compliance inspection of the health care institution during the time the accreditation report is valid.

F. If a licensee is an adult behavioral health therapeutic home or a behavioral health respite home, the licensee shall ensure that:

1. The Department is notified in writing if the licensee does not have a written agreement with a collaborating health care institution, as required in R9-10-1603(A)(3) or R9-10-1803(A)(3) as applicable; and
2. The adult behavioral health therapeutic home or behavioral health respite home does not accept an individual as a resident or recipient, as applicable, or provide services to a resident or recipient, as applicable, until:
   a. The adult behavioral health therapeutic home or behavioral health respite home has a written agreement with a collaborating health care institution;
   b. The collaborating health care institution has approved the adult behavioral health therapeutic home's or behavioral health respite home's:
      i. Scope of services, and
      ii. Policies and procedures; and
   c. The collaborating health care institution has verified the provider's skills and knowledge.

G. If a licensee is an affiliated outpatient treatment center, the licensee shall ensure that if the affiliated outpatient treatment center:

1. Plans to begin providing administrative support to a counseling facility at a time other than during the affiliated outpatient treatment center's license application process, the following information for each counseling facility is submitted to the Department before the affiliated outpatient treatment center begins providing administrative support:
   a. The counseling facility's name,
   b. The license number assigned to the counseling facility by the Department, and
   c. The date the affiliated outpatient treatment center will begin providing administrative support to the counseling facility; or
2. No longer provides administrative support to a counseling facility previously identified by the affiliated outpatient treatment center as receiving administrative support from the affiliated outpatient treatment center, the following information for each counseling facility is submitted to the Department within 30 calendar days after the affiliated outpatient treatment center no longer provides administrative support:
   a. The counseling facility's name,
   b. The license number assigned to the counseling facility by the Department, and
   c. The date the affiliated outpatient treatment center stopped providing administrative support to the counseling facility.

H. If a licensee is a counseling facility, the licensee shall ensure that if the counseling facility:

1. Plans to begin receiving administrative support from an affiliated outpatient treatment center at a time other than during the counseling facility's license application process, the following information for the affiliated outpatient treatment center is submitted to the Department before the counseling facility begins receiving administrative support:
   a. The affiliated outpatient treatment center's name,
   b. The license number assigned to the affiliated outpatient treatment center by the Department, and
   c. The date the counseling facility will begin receiving administrative support;
2. No longer receives administrative support from an affiliated outpatient treatment center previously identified by the counseling facility as providing administrative support to the counseling facility, the following information for the affiliated outpatient treatment center is submitted to the Department within 30 calendar days after the counseling facility no longer receives administrative support from the affiliated outpatient treatment center:
   a. The affiliated outpatient treatment center's name,
   b. The license number assigned to the affiliated outpatient treatment center by the Department, and
   c. The date the counseling facility stopped receiving administrative support from the affiliated outpatient treatment center;
3. Plans to begin sharing administrative support with an affiliated counseling facility at a time other than during the counseling facility's license application process, the following information for each affiliated counseling facility sharing administrative support with the counseling facility is submitted to the Department before the counseling facility and affiliated counseling facility begin sharing administrative support:
   a. The affiliated counseling facility's name,
   b. The license number assigned to the affiliated counseling facility by the Department, and
   c. The date the counseling facility and the affiliated counseling facility will begin sharing administrative support; or
4. No longer shares administrative support with an affiliated counseling facility previously identified by the counseling facility as sharing administrative support with the counseling facility, the following information is submitted for each affiliated counseling facility within 30 calendar days after the counseling facility and affiliated counseling facility no longer share administrative support:

a. The affiliated counseling facility's name,
b. The license number assigned to the affiliated counseling facility by the Department, and
c. The date the counseling facility and affiliated counseling facility will no longer be sharing administrative support.

I. A governing authority shall submit a license application required in R9-10-105 for:
1. A change in ownership of a health care institution;
2. A change in the address or location of a health care institution that provides medical services, nursing services, health-related services, or behavioral health services on the premises; or
3. A change in a health care institution's class or subclass.

J. A governing authority is not required to submit the documentation required in R9-10-105(A)(5) for a license application if:
1. The health care institution has not ceased operations for more than 30 calendar days,
2. A modification has not been made to the health care institution,
3. The services the health care institution is authorized by the Department to provide are not changed, and
4. The location of the health care institution's premises is not changed.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 26 A.A.R. 551, with an immediate effective date of March 3, 2020 (Supp. 20-1).

R9-10-110. Modification of a Health Care Institution

A. A licensee shall submit a request for approval of a modification of a health care institution when planning to make:
1. An addition or removal of an authorized service;
2. An addition or removal of a colocator;
3. A change in a health care institution's licensed capacity, licensed occupancy, respite capacity, or the number of dialysis stations;
4. A change in the physical plant, including facilities or equipment, that costs more than $300,000; or
5. A change in the building where a health care institution is located that affects compliance with:
   a. Applicable physical plant codes and standards incorporated by reference in R9-10-104.01, or
   b. Physical plant requirements in the specific Article in this Chapter applicable to the health care institution.

B. A licensee of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in R9-10-104.01 shall submit an application packet, according to R9-10-104(A), for approval of architectural plans and specifications for a modification of the health care institution described in subsections (A)(3) through (5).

C. A licensee of a health care institution shall submit a written request an application packet for a modification of the health care institution in a Department-provided format that contains:
1. The following information in a Department-provided format:
   a. The health care institution's name, mailing address, e-mail address, and license number;
   b. A narrative description of the modification, including as applicable:
      i. The services the licensee is requesting be added or removed as an authorized service;
      ii. The name and license number of an associated licensed provider being added or removed as a colocator;
      iii. The name and professional license number of an exempt health care provider being added or removed as a colocator;
      iv. If an associated licensed provider or exempt health care provider is being added as a colocator, the proposed scope of services;
      v. The current and proposed licensed capacity, licensed occupancy, respite capacity, and number of dialysis stations;
      vi. The change being made in the physical plant; and
      vii. The change being made that affects compliance with applicable physical plant codes and standards incorporated by reference in R9-10-104.01; and
   c. The name and e-mail address of the health care institution's administrator's or individual representing the health care institution as designated in according to A.R.S. § 36-422 and the dated signature of the administrator or individual; and
2. Documentation that demonstrates that the requested modification complies with applicable requirements in this Chapter, including as applicable:
   a. A floor plan showing the location of each colocator's proposed treatment area and the areas of the collaborating outpatient treatment center's premises shared with a colocator;
   b. For a change in the licensed capacity, licensed occupancy, respite capacity, or number of dialysis stations or a modification of the physical plant:
      i. A floor plan showing, for each story of the facility affected by the modification, the room layout, room usage, each door and each window, plumbing fixtures, each exit, and the location of each fire protection device; or
      ii. For a health care institution or part of the health care institution that is required to comply with the physical plant codes and standards incorporated by reference in R9-10-104.01 or the building, documentation of the Department's approval of the health care institution's architectural plans and specifications in R9-10-104(D); and
   c. Any other documentation to support the requested modification; and
3. If applicable, a copy of the written agreement the associated licensed provider or exempt health care provider has with the collaborating outpatient treatment center.

D. The Department shall approve or deny a request for a modification described in subsection (C) according to R9-10-108.

E. A licensee shall not implement a modification described in subsection (C) until an approval or amended license is issued by the Department.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-110 renumbered to Section R9-10-111; new Section R9-10-110 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-111. Enforcement Actions

A. If the Department determines that an applicant or licensee is violating applicable statutes and rules and the violation poses a direct risk to the life, health, or safety of a patient, the Department may:
1. Issue a provisional license to the applicant or licensee under A.R.S. § 36-425,
2. Assess a civil penalty under A.R.S. § 36-431.01,
3. Impose an intermediate sanction under A.R.S. § 36-427,
4. Remove a licensee and appoint another person to continue operation of the health care institution pending further action under A.R.S. § 36-429,
5. Suspend or revoke a license under A.R.S. § 36-427 and R9-10-112,
6. Deny a license under A.R.S. § 36-425 and R9-10-112, or
7. Issue an injunction under A.R.S. § 36-430.

B. In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a patient in the health care institution based on:
1. Repeated violations of statutes or rules,
2. Pattern of violations,
3. Types of violation,
4. Severity of violation, and
5. Number of violations.

Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 97, effective January 1, 2014 (Supp. 13-4). Section R9-10-111 renumbered to Section R9-10-112; new Section R9-10-111 renumbered from R9-10-110 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-112. Denial, Revocation, or Suspension of License

A. The Department may deny, revoke, or suspend a license to operate a health care institution if an applicant, a licensee, or a controlling person of the health care institution:
1. Provides false or misleading information to the Department;
2. Has had in any state or jurisdiction any of the following:
   a. An application or license to operate a health care institution denied, suspended, or revoked, unless the denial was based on failure to complete the licensing process or to pay a required licensing fee within a required time-frame; or
   b. A health care professional license or certificate denied, revoked, or suspended;
3. Does not comply with the applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter; or
4. Has operated a health care institution, within the preceding ten years, in violation of A.R.S. Title 36, Chapter 4 or this Chapter, that posed a direct risk to the life, health, or safety of a patient.

B. The Department shall suspend or revoke a hospital's license if the Department receives, pursuant to A.R.S. § 36-2901.08(H), notice from the Arizona Health Care Cost Containment System that the hospital's provider agreement registration with the Arizona Health Care Cost Containment System has been suspended or revoked.

Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 9 A.A.R. 526, effective April 1, 2003 (Supp. 03-1). Section R9-10-112 renumbered to R9-10-113; new Section R9-10-112 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-112 renumbered to Section R9-10-113; new Section R9-10-112 renumbered from R9-10-111 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-113. Tuberculosis Screening

A. If a health care institution is subject to the requirements of this Section, as specified in an Article in this Chapter, the health care institution's chief administrative officer shall ensure that the health care institution establishes, documents, and implements tuberculosis infection control activities that:
1. Are consistent with recommendations in Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019, published by the U.S. Department of Health and Human Services, Atlanta, GA 30333, available at https://www.cdc.gov/mmwr/volumes/68/wr/mm6819a3.htm, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Include:
   a. For each individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution and who is subject to the requirements of this Section, baseline screening, on or before the date specified in the applicable Article of this Chapter, that consists of:
      i. Assessing risks of prior exposure to infectious tuberculosis,
      ii. Determining if the individual has signs or symptoms of tuberculosis, and
      iii. Obtaining documentation of the individual's freedom from infectious tuberculosis according to subsection (B)(1);
   b. If an individual may have a latent tuberculosis infection, as defined in A.A.C. R9-6-1201:
      i. Referring the individual for assessment or treatment; and

ii. Annually obtaining documentation of the individual's freedom from symptoms of infectious tuberculosis, signed by a medical practitioner, occupation health provider, as defined in A.A.C. R9-6-801, or local health agency, as defined in A.A.C. R9-6-101;

c. Annually providing training and education related to recognizing the signs and symptoms of tuberculosis to individuals employed by or providing volunteer services for the health care institution;

d. Annually assessing the health care institution's risk of exposure to infectious tuberculosis;

e. Reporting, as specified in A.A.C. R9-6-202, an individual who is suspected of exposure to infectious tuberculosis; and

f. If an exposure to infectious tuberculosis occurs in the health care institution, coordinating and sharing information with the local health agency, as defined in A.A.C. R9-6-101, for identifying, locating, and investigating contacts, as defined in A.A.C. R9-6-101.

B. A health care institution's chief administrative officer shall:

1. For an individual for whom baseline screening and documentation of freedom from infectious tuberculosis is required by an Article in this Chapter, as specified in subsection (A)(2)(a), obtain one of the following as evidence of freedom from infectious tuberculosis:
   a. Documentation of a negative Mantoux skin test or other tuberculosis screening test that:
      i. Is recommended by the U.S. Centers for Disease Control and Prevention (CDC),
      ii. Was administered within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution, and
      iii. Includes the date and the type of tuberculosis screening test;
   b. If the individual had a history of tuberculosis or documentation of latent tuberculosis infection, as defined in A.A.C. R9-6-1201, compliance with subsection (A)(2)(b); or
   c. If the individual had a positive Mantoux skin test or other tuberculosis screening test according to subsection (B)(1)(a) and does not have history of tuberculosis or documentation of latent tuberculosis infection, as defined in A.A.C. R9-6-1201, a written statement:
      i. That the individual is free from infectious tuberculosis, signed by a medical practitioner or local health agency, as defined in A.A.C. R9-6-101; and
      ii. Dated within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution; and
2. As part of the annual assessment of the health care institution's risk of exposure to infectious tuberculosis according to subsection (A)(2)(d), ensure that documentation is obtained for each individual required to be screened for infectious tuberculosis that:
   a. Indicates the individual's freedom from symptoms of infectious tuberculosis; and
   b. Is signed by a medical practitioner, occupation health provider, as defined in A.A.C. R9-6-801, or local health agency, as defined in A.A.C. R9-6-101.

Historical Note

Former Section R9-10-113 repealed, new Section R9-10-113 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section R9-10-113 renumbered from R9-10-112 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-113 renumbered to Section R9-10-114; new Section R9-10-113 renumbered from R9-10-112 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 28 A.A.R. 1113 (May 27, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

R9-10-114. Clinical Practice Restrictions for Hemodialysis Technician Trainees

A. The following definitions apply in this Section:

1. "Assess" means collecting data about a patient by:
   a. Obtaining a history of the patient,
   b. Listening to the patient's heart and lungs, and
   c. Checking the patient for edema.
2. "Blood-flow rate" means the quantity of blood pumped into a dialyzer per minute of hemodialysis.
3. "Blood lines" means the tubing used during hemodialysis to carry blood between a vascular access and a dialyzer.
4. "Central line catheter" means a type of vascular access created by surgically implanting a tube into a large vein.
5. "Clinical practice restriction" means a limitation on the hemodialysis tasks that may be performed by a hemodialysis technician trainee.
6. "Conductivity test" means a determination of the electrolytes in a dialysate.
7. "Dialysate" means a mixture of water and chemicals used in hemodialysis to remove wastes and excess fluid from a patient's body.
8. "Dialysate-flow rate" means the quantity of dialysate pumped per minute of hemodialysis.
9. "Directly observing" or "direct observation" means a medical person stands next to an inexperienced hemodialysis technician trainee and watches the inexperienced hemodialysis technician trainee perform a hemodialysis task.
10. "Direct supervision" has the same meaning as "supervision" in A.R.S. § 36-401.
11. "Electrolytes" means chemical compounds that break apart into electrically charged particles, such as sodium, potassium, or calcium, when dissolved in water.
12. "Experienced hemodialysis technician trainee" means an individual who has passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual's knowledge and ability to perform hemodialysis.
13. "Fistula" means a type of vascular access created by a surgical connection between an artery and vein.
14. "Fluid-removal rate" means the quantity of wastes and excess fluid eliminated from a patient's blood per minute of hemodialysis to achieve the patient's prescribed weight, determined by:

a. Dialyzer size,
b. Blood-flow rate,
c. Dialysate-flow rate, and
d. Hemodialysis duration.

15. "Germicide-negative test" means a determination that a chemical used to kill microorganisms is not present.
16. "Germicide-positive test" means a determination that a chemical used to kill microorganisms is present.
17. "Graft" means a vascular access created by a surgical connection between an artery and vein using a synthetic tube.
18. "Hemodialysis machine" means a mechanical pump that controls:
    a. The blood-flow rate,
    b. The mixing and temperature of dialysate,
    c. The dialysate-flow rate,
    d. The addition of anticoagulant, and
    e. The fluid-removal rate.
19. "Hemodialysis technician" has the same meaning as in A.R.S. § 36-423(A).
20. "Hemodialysis technician trainee" means an individual who is working in a health care institution to assist in providing hemodialysis and who is not certified as a hemodialysis technician according to A.R.S. § 36-423(A).
21. "Inexperienced hemodialysis technician trainee" means an individual who has not passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual's knowledge and ability to perform hemodialysis.
22. "Medical person" means:
    a. A physician who is experienced in dialysis;
    b. A registered nurse practitioner who is experienced in dialysis;
    c. A nurse who is experienced in dialysis;
    d. A hemodialysis technician who meets the requirements in A.R.S. § 36-423(A) approved by the governing authority; and
    e. An experienced hemodialysis technician trainee approved by the governing authority.
23. "Not established" means not approved by a patient's nephrologist for use in hemodialysis.
24. "Patient" means an individual who receives hemodialysis.
25. "pH test" means a determination of the acidity of a dialysate.
26. "Preceptor course" means a health care institution's instruction and evaluation provided to a nurse, hemodialysis technician, or hemodialysis technician trainee that enables the nurse, hemodialysis technician, or hemodialysis technician trainee to provide direct observation and education to hemodialysis technician trainees.
27. "Respond" means to mute, shut off, reset, or troubleshoot an alarm.
28. "Safety check" means successful completion of tests recommended by the manufacturer of a hemodialysis machine, a dialyzer, or a water system used for hemodialysis before initiating a patient's hemodialysis.
29. "Water-contaminant test" means a determination of the presence of chlorine or chloramine in a water system used for hemodialysis.

B. An experienced hemodialysis technician trainee may:
1. Perform hemodialysis under direct supervision, and
2. Provide direct observation to another hemodialysis technician trainee only after completing the health care institution's preceptor course approved by the governing authority.

C. An experienced hemodialysis technician trainee shall not access a patient's:
1. Fistula that is not established, or
2. Graft that is not established.

D. An inexperienced hemodialysis technician trainee may perform the following hemodialysis tasks only under direct observation:
1. Access a patient's central line catheter;
2. Respond to a hemodialysis-machine alarm;
3. Draw blood for laboratory tests;
4. Perform a water-contaminant test on a water system used for hemodialysis;
5. Inspect a dialyzer and perform a germicide-positive test before priming a dialyzer;
6. Set up a hemodialysis machine and blood lines before priming a dialyzer;
7. Prime a dialyzer;
8. Test a hemodialysis machine for germicide presence;
9. Perform a hemodialysis machine safety check;
10. Prepare a dialysate;
11. Perform a conductivity test and a pH test on a dialysate;
12. Assess a patient;
13. Check and record a patient's vital signs, weight, and temperature;
14. Determine the amount and rate of fluid removal from a patient;
15. Administer local anesthetic at an established fistula or graft, administer anticoagulant, or administer replacement saline solution;
16. Perform a germicide-negative test on a dialyzer before initiating hemodialysis;
17. Initiate or discontinue a patient's hemodialysis;
18. Adjust blood-flow rate, dialysate-flow rate, or fluid-removal rate during hemodialysis; or
19. Prepare a blood, water, or dialysate culture to determine microorganism presence.

E. An inexperienced hemodialysis technician trainee shall not:
1. Access a patient's:
    a. Fistula that is not established, or
    b. Graft that is not established; or
2. Provide direct observation.

F. When a hemodialysis technician trainee performs hemodialysis tasks for a patient, the patient's medical record shall include:
1. The name of the hemodialysis technician trainee;
2. The date, time, and hemodialysis task performed;
3. The name of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee; and
4. The initials or signature of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee.

G. If the Department determines that a health care institution is not in substantial compliance with this Section, the Department may take enforcement action according to R9-10-111.

Historical Note

Former Section R9-10-114 repealed, new Section R9-10-114 adopted effective February 4, 1981 (Supp. 81-1). Amended by adding paragraph (7) as an emergency effective November 17, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Amended by adding paragraph (7) as a permanent amendment effec-

tive August 2, 1984 (Supp. 84-4). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section R9-10-114 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-114 renumbered to Section R9-10-115; new Section R9-10-114 renumbered from R9-10-113 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-115. Behavioral Health Paraprofessionals; Behavioral Health Technicians

If a health care institution is a behavioral health facility or is authorized by the Department to provide behavioral health services, an administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
   a. Delineate the services a behavioral health paraprofessional is allowed to provide at or for the health care institution;
   b. Cover supervision of a behavioral health paraprofessional, including documentation of supervision;
   c. Establish the qualifications for a behavioral health professional providing supervision to a behavioral health paraprofessional;
   d. Delineate the services a behavioral health technician is allowed to provide at or for the health care institution;
   e. Cover clinical oversight for a behavioral health technician, including documentation of clinical oversight;
   f. Establish the qualifications for a behavioral health professional providing clinical oversight to a behavioral health technician;
   g. Delineate the methods used to provide clinical oversight, including when clinical oversight is provided on an individual basis or in a group setting; and
   h. Establish the process by which information pertaining to services provided by a behavioral health technician is provided to the behavioral health professional who is responsible for the clinical oversight of the behavioral health technician;
2. A behavioral health paraprofessional receives supervision according to policies and procedures;
3. Clinical oversight is provided to a behavioral health technician to ensure that patient needs are met based on, for each behavioral health technician:
   a. The scope and extent of the services provided,
   b. The acuity of the patients receiving services, and
   c. The number of patients receiving services;
4. A behavioral health technician receives clinical oversight at least once during each two week period, if the behavioral health technician provides services related to patient care at the health care institution during the two week period;
5. When clinical oversight is provided electronically:
   a. The clinical oversight is provided verbally with direct and immediate interaction between the behavioral health professional providing and the behavioral health technician receiving the clinical oversight,
   b. A secure connection is used, and
   c. The identities of the behavioral health professional providing and the behavioral health technician receiving the clinical oversight are verified before clinical oversight is provided; and
6. A behavioral health professional provides supervision to a behavioral health paraprofessional or clinical oversight to behavioral health technician within the behavioral health professional's scope of practice established in the applicable licensing requirements under A.R.S. Title 32.

Historical Note

Adopted effective February 4, 1981 (Supp. 81-1). Amended by final rulemaking 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-115 renumbered to Section R9-10-116; new Section R9-10-115 renumbered from R9-10-114 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-116. Nutrition and Feeding Assistant Training Programs

A. For the purposes of this Section, "agency" means an entity other than a nursing care institution that provides the nutrition and feeding assistant training required in A.R.S. § 36-413.

B. An agency shall apply for approval to operate a nutrition and feeding assistant training program by submitting:
1. An application in a Department-provided format that contains:
   a. The name of the agency;
   b. The name, telephone number, and e-mail address of the individual in charge of the proposed nutrition and feeding assistant training program;
   c. The address where the nutrition and feeding assistant training program records are maintained;
   d. A description of the training course being offered by the nutrition and feeding assistant training program including for each topic in subsection (I):
      i. The information presented for each topic,
      ii. The amount of time allotted to each topic,
      iii. The skills an individual is expected to acquire for each topic, and
      iv. The testing method used to verify an individual has acquired the stated skills for each topic;
   e. Whether the agency agrees to allow the Department to submit supplemental requests for information as specified in subsection (F)(2); and
   f. The signature of the individual in charge of the proposed nutrition and feeding assistant training program and the date signed; and
2. A copy of the materials used for providing the nutrition and feeding assistant training program.

C. For an application for an approval of a nutrition and feeding assistant training program, the administrative review time-frame is 30 calendar days, the substantive review time-frame is 30 calendar days, and the overall time-frame is 60 calendar days.

D. Within 30 calendar days after the receipt of an application in subsection (B), the Department shall:
1. Issue an approval of the agency's nutrition and feeding assistant training program;

2. Provide a notice of administrative completeness to the agency that submitted the application; or
3. Provide a notice of deficiencies to the agency that submitted the application, including a list of the information or documents needed to complete the application.

E. If the Department provides a notice of deficiencies to an agency:
1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the agency;
2. If the agency does not submit the missing information or documents to the Department within 30 calendar days, the Department shall consider the application withdrawn; and
3. If the agency submits the missing information or documents to the Department within 30 calendar days, the substantive review time-frame begins on the date the Department receives the missing information or documents.

F. Within the substantive review time-frame, the Department:
1. Shall issue or deny an approval of a nutrition and feeding assistant training program; and
2. May make one written comprehensive request for more information, unless the Department and the agency agree in writing to allow the Department to submit supplemental requests for information.

G. If the Department issues a written comprehensive request or a supplemental request for information:
1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives the information requested, and
2. The agency shall submit to the Department the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

H. The Department shall issue:
1. An approval for an agency to operate a nutrition and feeding assistant training program if the Department determines that the agency and the application comply with A.R.S. § 36-413 and this Section; or
2. A denial for an agency that includes the reason for the denial and the process for appeal of the Department's decision if:
   a. The Department determines that the agency does not comply with A.R.S. § 36-413 and this Section; or
   b. The agency does not submit information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

I. An individual in charge of a nutrition and feeding assistant training program shall ensure that:
1. The materials and coursework for the nutrition and feeding assistant training program demonstrate the inclusion of the following topics:
   a. Feeding techniques;
   b. Assistance with feeding and hydration;
   c. Communication and interpersonal skills;
   d. Appropriate responses to resident behavior;
   e. Safety and emergency procedures, including the Heimlich maneuver;
   f. Infection control;
   g. Resident rights;
   h. Recognizing a change in a resident that is inconsistent with the resident's normal behavior; and
   i. Reporting a change in subsection (I)(1)(h) to a nurse at a nursing care institution;
2. An individual providing the training course is:
   a. A physician,
   b. A physician assistant,
   c. A registered nurse practitioner,
   d. A registered nurse,
   e. A registered dietitian,
   f. A licensed practical nurse,
   g. A speech-language pathologist, or
   h. An occupational therapist; and
3. An individual taking the training course completes:
   a. At least eight hours of classroom time, and
   b. Demonstrates that the individual has acquired the skills the individual was expected to acquire.

J. An individual in charge of a nutrition and feeding assistant training program shall issue a certificate of completion to an individual who completes the training course and demonstrates the skills the individual was expected to acquire as a result of completing the training course that contains:
1. The name of the agency approved to operate the nutrition and feeding assistant training program;
2. The name of the individual completing the training course;
3. The date of completion;
4. The name, signature, and professional license of the individual providing the training course; and
5. The name and signature of the individual in charge of the nutrition and feeding assistant training program.

K. The Department may deny, revoke, or suspend an approval to operate a nutrition and feeding assistant training program if an agency operating or applying to operate a nutrition and feeding assistance training program:
1. Provides false or misleading information to the Department;
2. Does not comply with the applicable statutes and rules;
3. Issues a training completion certificate to an individual who did not:
   a. Complete the nutrition and feeding assistant training program, or
   b. Demonstrate the skills the individual was expected to acquire; or
4. Does not implement the nutrition and feeding assistant training program as described in or use the materials submitted with the agency's application.

L. In determining which action in subsection (K) is appropriate, the Department shall consider the following:
1. Repeated violations of statutes or rules,
2. Pattern of non-compliance,
3. Types of violations,
4. Severity of violations, and
5. Number of violations.

Historical Note

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October

1, 2013 (Supp. 13-2). Section R9-10-116 renumbered to Section R9-10-117; new Section R9-10-116 renumbered from R9-10-115 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-117. Repealed

Historical Note

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-117 renumbered to Section R9-10-118; new Section R9-10-117 renumbered from R9-10-116 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Repealed by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

R9-10-118. Collaborating Health Care Institution

A. An administrator of a collaborating health care institution shall ensure that:
1. A list is maintained of adult behavioral health therapeutic homes and behavioral health respite homes for which the collaborating health care institution serves as a collaborating health care institution;
2. For each adult behavioral health therapeutic home or behavioral health respite home in subsection (A)(1), the collaborating health care institution maintains the following information:
   a. A copy of the documented agreement that establishes the responsibilities of the adult behavioral health therapeutic home or behavioral health respite home and the collaborating health care institution consistent with the requirements in this Chapter;
   b. For the adult behavioral health therapeutic home or behavioral health respite home, the following information:
      i. Provider's name;
      ii. Street address;
      iii. License number;
      iv. Whether the residence is an adult behavioral health therapeutic home or a behavioral health respite home;
      v. If the residence is a behavioral health respite home, whether the behavioral health respite home provides respite care services to:
         (1) Individuals 18 years of age or older, or
         (2) Individuals less than 18 years of age;
      vi. The beginning and ending dates of the documented agreement in subsection (A)(2)(a); and
      vii. The name and contact information for the individual assigned by the collaborating health care institution to monitor the adult behavioral health therapeutic home or behavioral health respite home;
   c. For the adult behavioral health therapeutic home or behavioral health respite home, a copy of the following that have been approved by the collaborating health care institution:
      i. Scope of services,
      ii. Policies and procedures, and
      iii. Documentation of the review and update of policies and procedures;
   d. A description of the required skills and knowledge for a provider, based on the scope of services of the adult behavioral health therapeutic home or behavioral health respite home, as established by the collaborating health care institution; and
   e. For a provider in the adult behavioral health therapeutic home or behavioral health respite home, documentation of:
      i. The provider's skills and knowledge;
      ii. If applicable, the provider's completion of training in assistance in the self-administration of medication;
      iii. Verification of the provider's skills and knowledge; and
      iv. If the provider is required to have clinical oversight according to R9-10-1805(C), the provider's receiving clinical oversight;
3. A provider's skills and knowledge are verified by a personnel member according to policies and procedures;
4. A provider who provides behavioral health services receives clinical oversight, required in R9-10-1805(C), from a behavioral health professional; and
5. A provider, other than a provider who is a medical practitioner or nurse, receives training in assistance in the self-administration of medication:
   a. From a medical practitioner or registered nurse or from a personnel member of the collaborating health care institution trained by a medical practitioner or registered nurse;
   b. That includes:
      i. A demonstration of the provider's skills and knowledge necessary to provide assistance in the self-administration of medication,
      ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      iii. The process for notifying the appropriate entities when an emergency medical intervention is needed; and
   c. That is documented.

B. For a patient referred to an adult behavioral health therapeutic home or a behavioral health respite home, an administrator shall ensure that:
1. A resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home does not present a threat to the referred patient, based on the resident's or recipient's developmental levels, social skills, verbal skills, and personal history;
2. The referred patient does not present a threat to a resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home based the referred patient's developmental levels, social skills, verbal skills, and personal history;
3. The referred patient requires services within the adult behavioral health therapeutic home's or behavioral health respite home's scope of services;
4. A provider of the adult behavioral health therapeutic home or behavioral health respite home has the verified skills and knowledge to provide behavioral health services to the referred patient;

5. A treatment plan for the referred patient, which includes information necessary for a provider to meet the referred patient's needs for behavioral health services, is completed and forwarded to the provider before the referred patient is accepted as a resident or recipient;
6. A patient's treatment plan is reviewed and updated at least once every 12 months, and a copy of the patient's updated treatment plan is forwarded to the patient's provider;
7. If documentation of a significant change in a patient's behavioral, physical, cognitive, or functional condition and the action taken by a provider to address patient's changing needs is received by the collaborating health care institution, a behavioral health professional or behavioral health technician reviews the documentation and:
   a. Documents the review; and
   b. If applicable:
      i. Updates the patient's treatment plan, and
      ii. Forwards the updated treatment plan to the provider within 10 working days after receipt of the documentation of a significant change;
8. If the review and updated treatment plan required in subsection (B)(7) is performed by a behavioral health technician, a behavioral health professional reviews and signs the review and updated treatment plan to ensure the patient is receiving the appropriate behavioral health services; and
9. In addition to the requirements for a medical record for a patient in this Chapter, a referred patient's medical record contains:
   a. The provider's name and the street address and license number of the adult behavioral health therapeutic home or behavioral health respite home to which the patient is referred,
   b. A copy of the treatment plan provided to the adult behavioral health therapeutic home or behavioral health respite home,
   c. Documentation received according to and required by subsection (B)(7),
   d. Any information about the patient received from the adult behavioral health therapeutic home or behavioral health respite home, and
   e. Any follow-up actions taken by the collaborating health care institution related to the patient.

C. For a patient referred to an adult behavioral health therapeutic home, an administrator shall ensure that the collaborating health care institution has documentation in the patient's medical record of evidence of freedom from infectious tuberculosis that meets the requirements in R9-10-113.

Historical Note

New Section R9-10-118 renumbered from R9-10-117 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). The word twelve has been changed to the numeral 12 in subsection (B)(6) for consistency in Chapter style and format (Supp. 21-2).

R9-10-119. Abortion Reporting

A. A licensed health care institution where abortions are performed shall submit to the Department, in a Department-provided format and according to A.R.S. § 36-2161(D) and (E), a report that contains the information required in A.R.S. § 36-2161(A) and the following:
1. The final disposition of the fetal tissue from the abortion; and
2. Except as provided in subsection (B), if custody of the fetal tissue is transferred to another person or persons:
   a. The name and address of the person or persons accepting custody of the fetal tissue,
   b. The amount of any compensation received by the licensed health care institution for the transferred fetal tissue, and
   c. Whether a patient provided informed consent for the transfer of custody of the fetal tissue.

B. A licensed health care institution where abortions are performed is not required to include the information specified in subsections (A)(2)(a) through (c) in the report required in subsection (A) if the licensed health care institution where abortions are performed:
1. Transfers custody of the fetal tissue:
   a. To a funeral establishment, as defined in A.R.S. § 32-1301;
   b. To a crematory, as defined in A.R.S. § 32-1301; or
   c. According to requirements in A.A.C. R18-13-1406, A.A.C. R18-13-1407, and A.A.C. R18-13-1408; or
2. Complies with requirements in A.A.C. R18-13-1405.

C. For purposes of this Section, the following definition applies: "Fetal tissue" means cells, or groups of cells with a specific function, obtained from an aborted human embryo or fetus.

Historical Note

New Section made by emergency rulemaking at 21 A.A.R. 1787, effective August 14, 2015 for 180 days (Supp. 15-3). Emergency expired February 10, 2016. Section amended by emergency rulemaking at 22 A.A.R. 420, effective February 11, 2016, for an additional 180 days; filed in the Office February 8, 2016 (Supp. 16-1). New Section made by final rulemaking at 22 A.A.R. 1343, with an immediate effective date upon filing under A.R.S. § 41-1032(A)(1) and (4) of May 5, 2016 (Supp. 16-2). Amended by final expedited rulemaking at 25 A.A.R. 1893, effective July 2, 2019 (Supp. 19-3).

R9-10-120. Opioid Prescribing and Treatment

A. This Section does not apply to a health care institution licensed under Article 20 of this Chapter.

B. In addition to the definitions in A.R.S. §§ 32-3248.01 and 36-401(A) and R9-10-101, the following definitions apply in this Section:
1. "Episode of care" means medical services, nursing services, or health-related services provided by a health care institution to a patient for a specific period of time, ending in discharge, the completion of the patient's treatment plan, or 90 days from the start of service provision to the patient, whichever is later.
2. "Order" means to issue written, verbal, or electronic instructions for a specific dose of a specific medication in a specific quantity and route of administration to be obtained and administered to a patient in a health care institution.

C. An administrator of a health care institution where opioids are prescribed or ordered as part of treatment shall:
1. Establish, document, and implement policies and procedures for prescribing or ordering an opioid as part of treatment, to protect the health and safety of a patient, that:

a. Cover which personnel members may prescribe or order an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
b. As applicable and except when contrary to medical judgment for a patient, are consistent with A.R.S. § 32-3248.01 and the Arizona Opioid Prescribing Guidelines or national opioid-prescribing guidelines, such as guidelines developed by the:
   i. Centers for Disease Control and Prevention, or
   ii. U.S. Department of Veterans Affairs and the U.S. Department of Defense;
c. As applicable, include how, when, and by whom:
   i. A patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database is reviewed;
   ii. An assessment is conducted of a patient's substance use risk;
   iii. The potential risks, adverse outcomes, and complications, including death, associated with the use of opioids are explained to a patient or the patient's representative;
   iv. Alternatives to a prescribed or ordered opioid are explained to a patient or the patient's representative;
   v. Informed consent is obtained from a patient or the patient's representative and, if applicable, in what situations, described in subsection (G), (H), or (I), informed consent would not be obtained before an opioid is prescribed or ordered for a patient;
   vi. A patient receiving an opioid is monitored; and
   vii. The actions taken according to subsections (C)(1)(c)(i) through (vi) are documented;
d. Address conditions that may impose a higher risk to a patient when prescribing or ordering an opioid as part of treatment, including:
   i. Concurrent use of a benzodiazepine or other sedative-hypnotic medication,
   ii. History of substance use disorder,
   iii. Co-occurring behavioral health issue, or
   iv. Pregnancy;
e. Cover the criteria for co-prescribing a short-acting opioid antagonist for a patient who is not an inpatient, as defined in R9-10-201;
f. Include that, if continuing control of a patient's pain after discharge is medically indicated due to the patient's medical condition, a method for continuing pain control will be addressed as part of discharge planning;
g. Include the frequency of the following for a patient being prescribed an opioid for longer than a 30-calendar-day period:
   i. Face-to-face interactions with the patient,
   ii. Conducting an assessment of a patient's substance use risk,
   iii. Renewal of a prescription for an opioid without a face-to-face interaction with the patient, and
   iv. Monitoring the effectiveness of the treatment;
h. If applicable according to A.R.S. § 36-2608, include documenting a dispensed opioid in the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   i. As applicable and consistent with A.R.S. § 32-3248.01, cover the criteria and procedures for tapering opioid prescription or ordering as part of treatment; and
   j. Cover the criteria and procedures for offering or referring a patient for treatment for substance use disorder;
2. Include in the plan for the health care institution's quality management program a process for:
   a. Review of known incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths, and
   b. Surveillance and monitoring of adherence to the policies and procedures in subsection (C)(1);
3. Except as prohibited by 42 CFR, Chapter I, Subchapter A, Part 2, or as provided in subsection (H)(1), ensure that, if a patient's death may be related to an opioid prescribed or ordered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the health care institution learns of the patient's death; and
4. Ensure that informed consent, if required from a patient or the patient's representative, includes:
   a. The patient's:
      i. Name,
      ii. Date of birth or other patient identifier, and
      iii. Condition for which opioids are being prescribed;
   b. That an opioid is being prescribed or ordered;
   c. The potential risks, adverse reactions, complications, and medication interactions associated with the use of an opioid;
   d. If applicable, the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and a benzodiazepine or another sedative-hypnotic medication;
   e. Alternatives to a prescribed or ordered opioid;
   f. The name and signature of the individual explaining the use of an opioid to the patient; and
   g. The signature of the patient or the patient's representative and the date signed.

D. Except as provided in subsection (H) or (I), an administrator of a health care institution where opioids are prescribed as part of treatment shall ensure that a medical practitioner authorized by policies and procedures to prescribe an opioid in treating a patient:
1. Before prescribing an opioid for a patient of the health care institution:
   a. Conducts a physical examination of the patient or reviews the documentation from a physical examination conducted during the patient's same episode of care;
   b. Except as exempted by A.R.S. § 36-2606(G), reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
   c. Conducts an assessment of the patient's substance use risk or reviews the documentation from an assessment of the patient's substance use risk conducted during the same episode of care by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;

d. Explains to the patient or the patient's representative the risks and benefits associated with the use of opioids or ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to explain to the patient or the patient's representative the risks and benefits associated with the use of opioids;
e. If applicable, explains alternatives to a prescribed opioid; and
f. Obtains informed consent from the patient or the patient's representative that meets the requirements in subsection (C)(4), including the potential risks, adverse outcomes, and complications associated with the concurrent use of an opioid and a benzodiazepine or another sedative-hypnotic medication, if the patient:
i. Is also prescribed or ordered a sedative-hypnotic medication, or
ii. Has been prescribed a sedative-hypnotic medication by another medical practitioner;

2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
a. The patient's diagnosis;
b. The patient's medical history, including co-occurring disorders;
c. The opioid to be prescribed;
d. Other medications or herbal supplements being taken by the patient;
e. If applicable:
i. The effectiveness of the patient's current treatment,
ii. The duration of the current treatment, and
iii. Alternative treatments tried by or planned for the patient;
f. The expected benefit of the treatment and, if applicable, the benefit of the new treatment compared with continuing the current treatment; and
g. Other factors relevant to the patient's being prescribed an opioid; and

3. If applicable, specifies in the patient's discharge plan how medically indicated pain control will occur after discharge to meet the patient's needs.

E. Except as provided in subsection (G) or (H), an administrator of a health care institution where opioids are ordered for administration to a patient in the health care institution as part of treatment shall ensure that a medical practitioner authorized by policies and procedures to order an opioid in treating a patient:

1. Before ordering an opioid for a patient of the health care institution:
a. Conducts a physical examination of the patient or reviews the documentation from a physical examination conducted:
i. During the patient's same episode of care; or
ii. Within the previous 30 calendar days, at a health care institution transferring the patient to the health care institution or by the medical practitioner who referred the patient for admission to the health care institution;
b. Except as exempted by A.R.S. § 36-2606(G), reviews the patient's profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
c. If medically appropriate based on the physical examination in subsection (E)(1)(a) and the patient's medical history, assesses the patient's substance use risk or reviews the documentation from an assessment of the patient's substance use risk conducted within the previous 30 calendar days by an individual licensed under A.R.S. Title 32 and authorized by policies and procedures to conduct an assessment of the patient's substance use risk;
d. Ensures that the patient or the patient's representative understands the risks and benefits associated with the use of opioids, as explained to the patient or the patient's representative according to policies and procedures; and
e. If applicable, explains alternatives to an ordered opioid; and

2. Includes the following information in the patient's medical record, an existing treatment plan, or a new treatment plan developed for the patient:
a. The patient's diagnosis;
b. The patient's medical history, including co-occurring disorders;
c. The opioid being ordered and the reason for the order;
d. Other medications or herbal supplements being taken by the patient; and
e. If applicable:
i. The effectiveness of the patient's current treatment,
ii. The duration of the current treatment,
iii. Alternative treatments tried by or planned for the patient,
iv. The expected benefit of a new treatment compared with continuing the current treatment, and
v. Other factors relevant to the patient's being ordered an opioid.

F. For a health care institution where opioids are administered as part of treatment or where a patient is provided assistance in the self-administration of medication for a prescribed opioid, including a health care institution in which an opioid may be prescribed or ordered as part of treatment, an administrator, a manager as defined in R9-10-801, or a provider, as applicable to the health care institution, shall:

1. Establish, document, and implement policies and procedures for administering an opioid as part of treatment or providing assistance in the self-administration of medication for a prescribed opioid, to protect the health and safety of a patient, that:
a. Cover which personnel members may administer an opioid in treating a patient and the required knowledge and qualifications of these personnel members;
b. Cover which personnel members may provide assistance in the self-administration of medication for a prescribed opioid and the required knowledge and qualifications of these personnel members;
c. Include how, when, and by whom a patient's need for opioid administration is assessed;
d. Include how, when, and by whom a patient receiving an opioid is monitored; and

e. Cover how, when, and by whom the actions taken according to subsections (F)(1)(c) and (d) are documented;
2. Include in the plan for the health care institution's quality management program a process for:
a. Review of incidents of opioid-related adverse reactions or other negative outcomes a patient experiences or opioid-related deaths, and
b. Surveillance and monitoring of adherence to the policies and procedures in subsection (F)(1);
3. Except as prohibited by 42 CFR, Chapter I, Subchapter A, Part 2, or as provided in subsection (H)(1), ensure that, if a patient's death may be related to an opioid administered as part of treatment, written notification, in a Department-provided format, is provided to the Department of the patient's death within one working day after the patient's death; and
4. Except as provided in subsection (H), ensure that an individual authorized by policies and procedures to administer an opioid in treating a patient or to provide assistance in the self-administration of medication for a prescribed opioid:
a. Before administering an opioid or providing assistance in the self-administration of medication for a prescribed opioid in compliance with an order as part of the treatment for a patient, identifies the patient's need for the opioid;
b. Monitors the patient's response to the opioid; and
c. Documents in the patient's medical record:
i. An identification of the patient's need for the opioid before the opioid was administered or assistance in the self-administration of medication for a prescribed opioid was provided, and
ii. The effect of the opioid administered or for which assistance in the self-administration of medication for a prescribed opioid was provided.

G. A medical practitioner authorized by a health care institution's policies and procedures to order an opioid in treating a patient is exempt from the requirements in subsection (E), if:
1. The health care institution's policies and procedures, required in subsection (C)(1) or the applicable Article in 9 A.A.C. 10, contain procedures for:
a. Providing treatment without obtaining the consent of a patient or the patient's representative,
b. Ordering and administering opioids in an emergency situation, and
c. Complying with the requirements in subsection (E) after the emergency is resolved;
2. The order for the administration of an opioid is:
a. Part of the treatment for a patient in an emergency, and
b. Issued in accordance with policies and procedures; and
3. The emergency situation is documented in the patient's medical record.

H. The requirements in subsections (D), (E), and (F)(4), as applicable, do not apply to a health care institution's:
1. Prescribing, ordering, or administration of an opioid as part of treatment for a patient with an end-of-life condition or pain associated with an active malignancy;
2. Prescribing an opioid as part of treatment for a patient when changing the type or dosage of an opioid, which had previously been prescribed by a medical practitioner of the health care institution for the patient according to the requirements in subsection (D):
a. Before a pharmacist dispenses the opioid for the patient; or
b. If changing the opioid because of an adverse reaction to the opioid experienced by the patient, within 72 hours after the opioid was dispensed for the patient by a pharmacist;
3. Ordering an opioid as part of treatment for no longer than three calendar days for a patient remaining in the health care institution and receiving continuous medical services or nursing services from the health care institution; or
4. Ordering an opioid as part of treatment:
a. For a patient receiving a surgical procedure or other invasive procedure; or
b. When changing the type, dosage, or route of administration of an opioid, which had previously been ordered by a medical practitioner of the health care institution for a patient according to the requirements in subsection (E), to meet the patient's needs.

I. The requirements in subsections (D)(1)(c) through (f) do not apply to a health care institution's prescribing an opioid as part of treatment for a patient with chronic, intractable pain who has had an established health professional-patient relationship with the prescribing medical practitioner for at least 90 days before the opioid is prescribed.

Historical Note

New Section made by emergency rulemaking at 23 A.A.R. 2203, effective July 28, 2017, for 180 days (Supp. 17-3). Emergency expired; new Section renewed by emergency rulemaking at 24 A.A.R. 303, effective January 25, 2018, for 180 days; new Section made by final rulemaking at 24 A.A.R. 657, with an immediate effective date of March 6, 2018 (Supp. 18-1). Amended by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4). Amended by final expedited rulemaking at 28 A.A.R. 3568 (November 18, 2022), with an immediate effective date November 2, 2022 (Supp. 22-4).

R9-10-121. Disease Prevention and Control

A. This Section applies:
1. When the Governor has declared a state of emergency, as defined in A.R.S. § 26-301, to address a situation described under A.R.S. § 36-787; and
2. To health care institutions licensed under Article 4, 5, or 8 of this Chapter.

B. The following definitions apply in this Section:
1. "Communicable disease" has the same meaning as in A.A.C. R9-6-101.
2. "Infection" has the same meaning as in A.A.C. R9-6-101.
3. "Respiratory symptoms" means coughing, shortness of breath, or wheezing not known to be caused by asthma or another chronic lung-related disease.

C. An administrator or manager, as applicable, shall ensure that policies and procedures are established, documented, and implemented, to protect the health and safety of a resident, that:
1. Cover screening and triage of personnel members, employees, visitors, and, except as provided in subsection (E), any other individuals entering the facility;
2. Cover the manner and frequency of assessing residents to determine a change in a resident's medical condition;
3. Establish disinfection protocols and schedules for frequently touched surfaces; and

4. Specify requirements for distancing residents who exhibit symptoms of a communicable disease from other residents to reduce the chance for infection of another individual.

D. An administrator or manager, as applicable, shall ensure that:
1. Except as provided in subsection (E), before entering the facility, each individual, including a personnel member, employee, or visitor, is screened for fever or respiratory symptoms indicative of a communicable disease;
2. If an individual refuses to be screened, the individual is excluded from entry to the facility;
3. If an individual is determined to have a fever or respiratory symptoms, the individual is excluded from entry to the facility until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner;
4. If an individual, other than a resident, develops a fever or respiratory symptoms while in the facility, the individual is required to leave the facility and not return until symptoms have resolved or the individual has been evaluated and cleared by a medical practitioner; and
5. If insufficient personnel members are available to meet the needs of all residents in the facility, the administrator or manager, as applicable, implements the disaster plan required in R9-10-424, R9-10-523, or R9-10-818, as applicable, which may include moving a resident to a different facility.

E. An administrator or manager, as applicable, may allow an emergency medical care technician, as defined in A.R.S. § 36-2201, to enter the facility without screening if the emergency medical care technician is responding to a call for providing emergency medical services, as defined in A.R.S. § 36-2201, to a resident or other individual in the facility.

F. An administrator or manager, as applicable, shall ensure that:
1. An assessment of a resident includes whether the resident has a fever or respiratory symptoms indicative of a communicable disease and is documented in the resident's medical record; and
2. If a resident is found to have a fever or respiratory symptoms indicative of a communicable disease:
   a. The resident is evaluated by a medical practitioner within 24 hours to determine what services need to be provided to the resident and what precautions need to be taken by the facility, and the evaluation is documented in the resident's medical record;
   b. To reduce the chance for infection of another individual, the resident is:
      i. Kept at a distance of at least six feet from other residents; or
      ii. If not possible to keep the resident at a distance from other residents, required to wear a facemask;
   c. A personnel member:
      i. Takes precautions, which may include the use of gloves and a facemask or other personal protection equipment, while providing services to the resident; and
      ii. Removes and, if applicable, disposes of the personal protection equipment and washes the personnel member's hands with soap and water for at least 20 seconds or, if soap and water are not available, uses a hand sanitizer containing at least 60% alcohol immediately after providing services to the resident and before providing services to another resident;
   d. Linens, dishes, utensils, and other items used by the resident are:
      i. Kept separate from similar items used by a resident who does not have a fever or respiratory symptoms indicative of a communicable disease, and
      ii. Disinfected or disposed of in a manner to reduce the chance for infection of another individual; and
   e. Surfaces touched by the resident are disinfected before another individual touches the surface.

G. An administrator or manager, as applicable, shall ensure that door handles, tables, chair backs and arm rests, light switches, and other frequently touched surfaces are cleaned and disinfected, according to policies and procedures, with:
1. An alcohol solution containing at least 70% alcohol;
2. A bleach solution containing four teaspoons of bleach per quart of water; or
3. An EPA-approved household disinfectant specified in a list, which is incorporated by reference, available at https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19, and does not include any later amendments or editions of the incorporated matter.

Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by emergency rulemaking at 26 A.A.R. 509, with an immediate effective date of March 16, 2020, for 180 days (Supp. 19-1). Emergency expired. New Section made by final rulemaking at 26 A.A.R. 2793, with an immediate effective date of October 7, 2020 (Supp. 20-4).

R9-10-122. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 2145, effective May 1, 2001 (Supp. 01-2). Amended by final rulemaking at 8 A.A.R. 3578, effective July 26, 2002 (Supp. 02-3). Amended by exempt rulemaking at 14 A.A.R. 3958, effective September 26, 2008 (Supp. 08-3). Amended by exempt rulemaking at 15 A.A.R. 2100, effective January 1, 2010 (Supp. 09-4). Section repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

R9-10-123. Repealed

Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

R9-10-124. Repealed

Historical Note

Former Section R9-10-124 repealed, new Section R9-10-124 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

ARTICLE 2. HOSPITALS

R9-10-201. Definitions

Authorizing Statutes

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.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

36-407. Prohibited acts; required acts

A. A person shall not establish, conduct or maintain in this state 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 department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

B. The licensee shall not imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this chapter and the underlying rules for the particular class or subclass of health care institution within which the licensee is licensed.

C. The licensee may not transfer or assign the license. A license is valid only for the premises occupied by the institution at the time of its issuance.

D. The licensee shall not personally or through an agent offer or imply an offer of rebate or fee splitting to any person regulated by title 32 or chapter 17 of this title.

E. The licensee shall submit an itemized statement of charges to each patient.

F. A health care institution shall refer a patient who is discharged after receiving emergency services for a drug-related overdose to a behavioral health services provider.

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.

36-421. Construction or modification of a health care institution

A. A license application for a health care institution shall include, on a form provided by the department, a notarized attestation from an architect registered pursuant to title 32, chapter 1 that verifies the architectural plans and specifications meet or exceed standards adopted by the department. These plans and specifications shall meet the minimum standards for licensure within the class or subclass of health care institution for which it is intended. The application shall include the name and address of each owner and lessee of any agricultural land that is regulated pursuant to section 3-365.

B. Construction or modification of a licensed health care institution shall meet the minimum standards for licensure within the class or subclass of health care institution for which it is intended.

C. An applicant shall comply with all state statutes and rules and local codes and ordinances required for the health care institution's construction.

D. A health care institution or its facility shall not be licensed if it is located on property that is less than four hundred feet from agricultural land that is regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the health care institution or facility may be licensed and located within the affected buffer zone. The agreement may include any stipulations regarding the health care institution or facility, including conditions for future expansion of the health care institution or facility and changes in the operational status of the health care institution or facility that will result in a breach of the agreement. This subsection does not apply to the issuance of a license for a health care institution located in the same location for which a health care institution license was previously issued.

E. Notwithstanding any law to the contrary, a health care institution that was licensed as a level 1 psychiatric acute behavioral health facility-inpatient facility as of January 1, 2012 and that is not certified under title XIX of the social security act shall be licensed as a hospital and is not required to comply with the physical plant standards for a general hospital, rural general hospital or special hospital prescribed by the department.

F. An adult behavioral health therapeutic home is not required to comply with the building codes or zoning standards for a health care institution prescribed by the department.

G. The Arizona pioneers' home is not required to comply with subsection A of this section and the physical plant standards for a health care institution prescribed by the department.

H. A nursing-supported group home is not required to comply with the zoning standards for a health care institution prescribed by the department.

I. For the purposes of this section, health care institution does not include a home health agency or a hospice service agency.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department and that contains all of the following:

(a) The name and location of the health care institution.

(b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.

(c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.

(d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

(e) The class or subclass of health care institution to be established or operated.

(f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

(g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

(h) Other pertinent information required by the department for the proper administration of this chapter and department rules.

2. The attestation required by section 36-421, subsection A.

3. The applicable application fee.

B. An application submitted pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.

F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements

for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. A behavioral health residential facility that provides services to children must notify the department within thirty days after the facility begins contracting exclusively with the federal government, receives only federal monies and does not contract with this state.

J. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

K. Except for an outpatient treatment center that provides dialysis services or abortion procedures or that is exempt from licensure pursuant to section 36-402, subsection A, paragraph 12, a person

wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.

2. All applicable application and license fees.

3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

L. Within seven days after the department's receipt of the items required in subsection K of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.

2. The name of the licensee.

3. The facility's class or subclass.

4. The temporary license's effective date.

5. The location of the licensed premises.

M. A facility may begin operating on the effective date of the temporary license.

N. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

O. An outpatient treatment center that is exempt from licensure pursuant to section 36-402, subsection A, paragraph 12 and that has the same governing authority as a hospital licensed pursuant to this chapter is subject to reasonable inspection by the department if the director has reasonable cause to believe that patient harm is or may be occurring at that outpatient treatment center. A substantiated complaint that harm is occurring at an exempt outpatient treatment center is a violation of this chapter against the hospital's license.

P. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.

2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

36-423. Hemodialysis technicians; minimum requirements; definition

A. Except as provided in subsection B, beginning on April 1, 2003, a facility that provides hemodialysis treatment shall only use a hemodialysis technician who is certified by a national organization that certifies hemodialysis technicians.

B. Beginning on April 1, 2003, an employee who provides hemodialysis treatment and who is not certified pursuant to subsection A is a hemodialysis technician trainee. A hemodialysis technician trainee may provide hemodialysis treatment in any facility unless the trainee fails to pass the national certification examination within two years after employment. The department of health services shall establish by rule appropriate clinical practice restrictions for hemodialysis technician trainees. An employee who is employed to provide hemodialysis treatment before April 1, 2003 must meet the requirements of this section on or before April 1, 2006.

C. A facility that provides hemodialysis treatment must maintain the verification of certification in the hemodialysis technician's personnel file.

D. For the purposes of this section, "hemodialysis technician" means a person who, under the direct supervision of a physician licensed pursuant to title 32, chapter 13 or 17, or a registered nurse licensed pursuant to title 32, chapter 15, provides assistance in the treatment of patients who receive dialysis treatment for end stage renal disease.

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators and assisted living facility managers

A. Except as provided in subsection B of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant's character and qualifications.

B. The director may accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the institution's accreditation report for the licensure period and the institution is accredited by an independent, nonprofit accrediting organization approved by the secretary of the United States department of health and human services. If the health care institution's accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution. For the purposes of this subsection, each licensed premises of a health care institution must have its own

accreditation report. The director may not accept an accreditation report in lieu of a compliance inspection of:

1. An intermediate care facility for individuals with intellectual disabilities.

2. A health care institution if the health care institution has been subject to an enforcement action pursuant to section 36-427 or 36-431.01 within the year preceding the annual licensing fee anniversary date.

C. On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.

D. The director shall immediately report to the board of examiners of nursing care institution administrators and assisted living facility managers information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license

A. On receipt of a properly completed application for a health care institution license, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection and after the submission of the applicable licensing fee, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be posted in a conspicuous location in the reception area of that institution.

B. The director shall issue a license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same

licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.

2. The licensed capacity of the health care institution does not exceed its licensed capacity before its designation as a critical access hospital.

3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. A health care institution license does not expire and remains valid unless:

1. The department subsequently revokes or suspends the license.

2. The license is considered void because the licensee did not pay the licensing fee before the licensing fee due date.

D. Except as provided in section 36-424, subsection B and subsection E of this section, the department shall conduct a compliance inspection of a health care institution to determine compliance with this chapter and rules adopted pursuant to this chapter at least once annually.

E. If the department determines a facility to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months after the date of the deficiency free survey. This subsection does not prohibit the department from enforcing licensing requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide intensive care services.

G. The director shall issue a provisional license for a period of not more than one year if an inspection or investigation of a currently licensed health care institution or a health care institution for which an applicant is seeking a license reveals that the institution is not in substantial compliance with department licensure requirements and the director believes that the immediate interests of the patients and the general public are best served if the institution is given an opportunity to correct deficiencies. The applicant or licensee shall agree to carry out a plan to eliminate deficiencies that is acceptable to the director. The director shall not issue consecutive provisional licenses to a single health care institution. The director shall not issue a license to the current licensee or a successor applicant before the expiration of the provisional license unless the health care institution submits an application for a substantial compliance survey and is found to be in substantial compliance. The director may issue a license only if the director determines that the institution is in substantial compliance with the licensure requirements of the department and this chapter. This subsection does not prevent the director from taking action to protect the safety of patients pursuant to section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5 of this chapter, title 12, chapter 13, article 7.1 and section 12-2235, the licensee shall keep current department inspection reports at the health care institution. Unless federal law requires otherwise, the licensee shall post in a conspicuous location a notice that identifies the location at that institution where the inspection reports are available for review.

I. A health care institution shall immediately notify the department in writing when there is a change of the chief administrative officer specified in section 36-422, subsection A, paragraph 1, subdivision (g).

J. When the department issues an original license or an original provisional license to a health care institution, it shall notify the owners and lessees of any agricultural land within one-fourth mile of the health care institution. The health care institution shall provide the department with the names and addresses of owners or lessees of agricultural land within one-fourth mile of the proposed health care institution.

K. In addition to the grounds for denial of licensure prescribed pursuant to subsection A of this section, the director may deny a license because an applicant or anyone in a business relationship with the applicant, including stockholders and controlling persons, has had a license to operate a health care institution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.

L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements.

36-427. Suspension or revocation; intermediate sanctions

A. The director, pursuant to title 41, chapter 6, article 10, may suspend or revoke, in whole or in part, the license of any health care institution if its owners, officers, agents or employees:

1. Violate this chapter or the rules of the department adopted pursuant to this chapter.

2. Knowingly aid, permit or abet the commission of any crime involving medical and health-related services.

3. Have been, are or may continue to be in substantial violation of the requirements for licensure of the institution, as a result of which the health or safety of one or more patients or the general public is in immediate danger.

4. Fail to comply with section 36-2901.08.

5. Violate section 36-2302.

B. If the licensee, the chief administrative officer or any other person in charge of the institution refuses to permit the department or its employees or agents the right to inspect the institution's premises as provided in section 36-424, such action shall be deemed reasonable cause to believe that a substantial violation under subsection A, paragraph 3 of this section exists.

C. If the director reasonably believes that a violation of subsection A, paragraph 3 of this section has occurred and that life or safety of patients will be immediately affected, the director, on written notice to the licensee, may order the immediate restriction of admissions or readmissions, selected transfer of patients out of the facility, reduction of capacity and termination of specific services, procedures, practices or facilities.

D. The director may rescind, in whole or in part, sanctions imposed pursuant to this section on correction of the violation or violations for which the sanctions were imposed.

36-429. Removal of licensee; temporary management continued operation

A. If the director reasonably believes that a violation of this chapter by a licensee endangers the health, safety or welfare of one or more of the licensee's patients, in addition to other remedies provided by this chapter, the director may enter into an agreement with the licensee or bring an action requesting the superior court to:

1. Remove the administrative officers, agents or employees of such licensee by injunction, enjoin the licensee from continued operation and revoke the license.

2. Appoint temporary personnel to continue operation of the health care institution under conditions and requirements set by the court pending correction of the violation and restoration of the licensee, revocation of the license or correction of the violation and change of ownership.

B. The action shall be brought in the name of the people of the state through the attorney general in the superior court in the county in which the health care institution is located.

36-430. Unlicensed operation prohibited; injunction

The operation or maintenance of a health care institution which does not hold a current and valid license or which exceeds the range of the services authorized by the class or subclass for which it is licensed is a violation of this chapter and is declared a nuisance inimical to the public health and safety. The director, in the name of the people of the state, through the attorney general, may bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such health care institution until substantial compliance with the provisions of this chapter and the rules and regulations and standards adopted pursuant thereto is obtained.

36-2161. Abortions; reporting requirements

A. A hospital or facility in this state where abortions are performed must submit to the department of health services on a form prescribed by the department a report of each abortion performed in the

hospital or facility. The report shall not identify the individual patient by name or include any other information or identifier that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or sought to obtain an abortion. The report must include the following information:

1. The name and address of the facility where the abortion was performed.

2. The type of facility where the abortion was performed.

3. The county where the abortion was performed.

4. The woman's age.

5. The woman's educational background by highest grade completed and, if applicable, level of college completed.

6. The county and state in which the woman resides.

7. The woman's race and ethnicity.

8. The woman's marital status.

9. The number of prior pregnancies and prior abortions of the woman.

10. The number of previous spontaneous terminations of pregnancy of the woman.

11. The gestational age of the unborn child at the time of the abortion.

12. The reason for the abortion, including at least one of the following:

(a) The abortion is elective.

(b) The abortion is due to maternal health considerations, including one of the following:

(i) A premature rupture of membranes.

(ii) An anatomical abnormality.

(iii) Chorioamnionitis.

(iv) Preeclampsia.

(v) Other.

(c) The abortion is due to fetal health considerations, including the fetus being diagnosed with at least one of the following:

(i) A lethal anomaly.

(ii) A central nervous system anomaly.

(iii) Other.

(d) The pregnancy is the result of a sexual assault.

(e) The pregnancy is the result of incest.

(f) The woman is being coerced into obtaining an abortion.

(g) The woman is a victim of sex trafficking.

(h) The woman is a victim of domestic violence.

(i) Other.

(j) The woman declined to answer.

13. The type of procedure performed or prescribed and the date of the abortion.

14. Any preexisting medical conditions of the woman that would complicate pregnancy.

15. Any known medical complication that resulted from the abortion, including at least one of the following:

(a) Shock.

(b) Uterine perforation.

(c) Cervical laceration requiring suture or repair.

(d) Heavy bleeding or hemorrhage with estimated blood loss of at least five hundred cubic centimeters.

(e) Aspiration or allergic response.

(f) Postprocedure infection.

(g) Sepsis.

(h) Incomplete abortion retaining part of the fetus requiring reevacuation.

(i) Damage to the uterus.

(j) Failed termination of pregnancy.

(k) Death of the patient.

(l) Other.

(m) None.

16. The basis for any medical judgment that a medical emergency existed that excused the physician from compliance with the requirements of this chapter.

17. The physician's statement if required pursuant to section 36-2301.01.

18. If applicable, the weight of the aborted fetus for any abortion performed pursuant to section 36-2301.01.

19. Whether a fetus or embryo was delivered alive as defined in section 36-2301 during or immediately after an attempted abortion and the efforts made to promote, preserve and maintain the life of the fetus or embryo pursuant to section 36-2301.

20. Statements by the physician and all clinical staff who observed the fetus or embryo during or immediately after the abortion certifying under penalty of perjury that, to the best of their knowledge, the aborted fetus or embryo was not delivered alive as defined in section 36-2301.

21. The medical specialty of the physician performing the abortion, including one of the following:

(a) Obstetrics-gynecology.

(b) General or family practice.

(c) Emergency medicine.

(d) Other.

22. The type of admission for the patient, including whether the abortion was performed:

(a) As an outpatient procedure in an abortion clinic.

(b) As an outpatient procedure at a hospital.

(c) As an inpatient procedure at a hospital.

(d) As an outpatient procedure at a health care institution other than an abortion clinic or hospital.

23. Whether anesthesia was administered to the mother.

24. Whether anesthesia was administered to the unborn child.

25. Whether any genetic abnormality of the unborn child was detected at or before the time of the abortion by genetic testing, such as maternal serum tests, or by ultrasound, such as nuchal translucency screening, or by other forms of testing.

26. If a surgical abortion was performed, the method of final disposition of bodily remains and whether the woman exercised her right to choose the final disposition of bodily remains.

B. The hospital or facility shall request the information specified in subsection A, paragraph 12 of this section at the same time the information pursuant to section 36-2153 is provided to the woman individually and in a private room to protect the woman's privacy. The information requested pursuant to subsection A, paragraph 12 of this section may be obtained on a medical form provided to the woman to complete if the woman completes the form individually and in a private room.

C. If the woman who is seeking the abortion discloses that the abortion is being sought because of a reason described in subsection A, paragraph 12, subdivision (d), (e), (f), (g) or (h) of this section, the hospital or facility shall provide the woman with information regarding the woman's right to report a crime to law enforcement and resources available for assistance and services, including a national human trafficking resource hotline.

D. The report must be signed by the physician who performed the abortion or, if a health professional other than a physician is authorized by law to prescribe or administer abortion medication, the signature and title of the person who prescribed or administered the abortion medication. The form may be signed electronically and shall indicate that the person who signs the report is attesting that the information in the report is correct to the best of the person's knowledge. The hospital or facility must transmit the report to the department within fifteen days after the last day of each reporting month.

E. Any report filed pursuant to this section shall be filed electronically at an internet website that is designated by the department unless the person required to file the report applies for a waiver from electronic reporting by submitting a written request to the department.

36-2901.08. Hospital assessment

(Conditionally Rpld.)

A. The director shall establish, administer and collect an assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs, except for costs of the services described in section 36-2907, subsection F, that are incurred beginning January 1, 2014 and that are not covered by the proposition 204 protection account established by section 36-778 and the Arizona tobacco litigation settlement fund established by section 36-2901.02 or any other monies appropriated to cover these costs, for all of the following individuals:

1. Persons who are defined as eligible pursuant to section 36-2901.07.

2. Persons who do not meet the eligibility standards described in the state plan or the section 1115 waiver that were in effect immediately before November 27, 2000, but who meet the eligibility standards described in the state plan as effective October 1, 2001.

3. Persons who are defined as eligible pursuant to section 36-2901.01 but who do not meet the eligibility standards in either section 36-2934 or the state plan in effect as of January 1, 2013.

B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment. The assessment is subject to approval by the federal government to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.

C. The director may establish modifications or exemptions to the assessment. In determining the modifications or exemptions, the director may consider factors including the size of the hospital, the specialty services available to patients and the geographic location of the hospital.

D. Before implementing the assessment, and thereafter if the methodology is modified, the director shall present the methodology to the joint legislative budget committee for review.

E. The administration shall not collect an assessment for costs associated with service after the effective date of any reduction of the federal medical assistance percentage established by 42 United States Code section 1396d(y) or 1396d(z) that is applicable to this state to less than eighty per cent.

F. The administration shall deposit the revenues collected pursuant to this section in the hospital assessment fund established by section 36-2901.09.

G. A hospital shall not pass the cost of the assessment on to patients or third-party payors that are liable to pay for care on a patient's behalf. As part of its financial statement submissions pursuant to section 36-125.04, a hospital shall submit to the department of health services an attestation that it has not passed on the cost of the assessment to patients or third-party payors.

H. If a hospital does not comply with this section as prescribed by the director, the director may suspend or revoke the hospital's Arizona health care cost containment system provider agreement registration. If the hospital does not comply within one hundred eighty days after the director

suspends or revokes the hospital's provider agreement, the director shall notify the director of the department of health services, who shall suspend or revoke the hospital's license pursuant to section 36-427.

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.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A of this section. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application is not complete until the agency receives all requested information.

D. Except for an application submitted to the department of water resources pursuant to title 45, a determination by an agency that an application is not administratively complete is an appealable agency action, which if timely initiated, entitles the applicant to an adjudication on the merits of the administrative completeness of the application.

41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.

2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.

2. The applicable licensing time frames.

3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 8

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to twenty (20) rules in Title 9, Chapter 10, Article 8 regarding Assisted Living Facilities. Specifically, the rules establish the minimum requirements for contracts to provide assisted living facility services, personnel and personnel records, residency and residency agreements, residence service plans, transport and transfer of a resident, resident rights, resident's medical records, behavioral care, behavioral health services, personal care services, directed care services, medication services, food services, safety standards, environmental standards, and physical plant standards.

In the prior 5YRR for these rules, which was approved by the Council in October 2018, the Department proposed to amend several rules to make them more clear, concise, understandable, consistent and effective. The Department indicates it completed the prior proposed course of action by final rulemaking which became effective on October 1, 2019.

Proposed Action

In the current report, the Department is proposing to amend eight (8) rules to improve their effectiveness, consistency, clarity, conciseness, and understandability. The Department indicates it plans to submit a Notice of Final Rulemaking to the Council by February 2024.

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 has reviewed the rules and believes that the changes made to the rules may have created a minimal increase in costs but believes that the benefit of having more understandable rules outweighs any costs incurred. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules. Stakeholders include the Department, health care institutions, personnel members, patients/residents of a health care institution 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?

The Department has determined that these 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 it received eight (8) recommendations from Arizona LeadingAge which are summarized in Section 7 of the Department's report. The Department has also provided copies of the written comments, which have been included in the final materials for the Council's reference. The Department indicates it plans to amend the rules in response to most, but not all, of the suggestions.

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

The Department indicates the rules are generally clear, concise, and understandable except for the following rules:

- **R9-10-803**: The rule could be improved by simplifying the language in subsection (C)(1)(j) and correcting an "and" to an "or" since either a manager at an assisted living facility or a resident/resident's representative can initiate termination of residency. In

addition, grammatical errors should be corrected in subsection (C)(1)(w) by changing "report" to the plural form, "reports," and adding a comma in subsection (J).

- **R9-10-806**: The rule could be improved by removing the duplicative language, "documentation of compliance," in subsection (C)(1)(c)(ix).
- **R9-10-807**: The rule could be improved by correcting grammatical errors in subsections (F)(2), (G), and (H).
- **R9-10-811**: The rule could be improved by correcting grammatical errors in subsection (C), which include adding necessary articles of speech, "the" and "an."
- **R9-10-816**: The rule could be improved by correcting a grammatical error in subsection (B) by adding the word "the" where necessary.
- **R9-10-820**: The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (F), changing "that" to "than."

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

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- **R9-10-803**: Subsection (C)(1)(i) can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including policies and procedures that cover resident's rights including assisting a resident who does not speak English or who has a physical or other disability to become aware of the resident rights.
- **R9-10-803 & R9-10-810**: The rule is inconsistent with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 179. Rules in these Sections will need to be developed to require an assisted living facility to implement administrative policies and procedures which allow a patient to have religious visitation from a clergy member of their choice.
- **R9-10-811**: The rule is consistent with other rules and statutes; however, the rule can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including that a manager shall ensure that an order is dated and authenticated by a medical practitioner or behavioral health professional.
- **R9-10-816**: The rule could be improved by incorporating in R9-10-816(F) the requirements in A.R.S. § 32-1909, regarding the policies and procedures of accepting medications from donors to assisted living facilities as an authorized recipient.
- **R9-10-820**: The rule is inconsistent with Laws 2022, Ch. 34 regarding architectural plans. The Department is no longer approving architectural plans for construction or modification of health care institutions, instead, Health Care Institutions will have to submit a notarized attestation of architectural plans to the Department.

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

The Department indicates the rules are currently effective in achieving their objectives except for the following:

- **R9-10-806**: The rule could be improved by expanding the workforce to allow for a CNA who receives medication training to work as a caregiver.

- **R9-10-817**: The rule could be improved in subsection (B)(5) by referencing the most up-to-date dietary guidelines set forth by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.

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

The Department 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?

Not applicable. The Department indicates that federal laws do not apply to the rules in Title 9, Chapter 10, Article 8.

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?

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 a general permit is not applicable pursuant to the exception found in A.R.S. § 41-1037(A)(2), specifically, that the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute. The Department indicates the rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405.

11. Conclusion

This 5YRR from the Department relates to twenty (20) rules in Title 9, Chapter 10, Article 8 regarding minimum requirements for Assisted Living Facilities. The Department has identified eight (8) rules it intends to amend to improve their effectiveness, consistency, clarity, conciseness, and understandability. The Department indicates it plans to submit a Notice of Final Rulemaking to the Council by February 2024.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

June 8, 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 8, Five-Year-Review Report for Health Care Institutions: Licensing – Assisted Living Facilities

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. 10, Article 8, Assisted Living Facilities, which is due on July 31, 2023.

The Department reviewed the rules in 9 A.A.C. 10, Article 8, 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 Digitally signed by Stacie Gravito
Date: 2023.06.08 09:11:16 -07'00'

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Amended[1] Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services -

Health Care Institutions: Licensing

Article 8. Assisted Living Facilities

June 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 and 36-406

2. The objective of each rule:

Rule	Objective
R9-10-801	The objective of the rule is to define terms used in the Article to enable readers to better understand the requirements and to allow for consistent interpretation of the terms.
R9-10-802	The objective of the rule is to provide additional application requirements specific to an assisted living facility.
R9-10-803	The objective of the rule is to establish minimum requirements for an assisted living facility's governing authority and administrator, including specific administrative policies and procedures to protect the health and safety of a resident.
R9-10-804	The objective of the rule is to establish minimum requirements for an assisted living facility's quality management program.
R9-10-805	The objective of the rule is to establish minimum requirements for a person who contracts with the licensee to provide assisted living facility services.
R9-10-806	The objective of the rule is to establish minimum requirements for an assisted living facility personnel and personnel records.
R9-10-807	The objective of the rule is to establish minimum requirements for residency and residency agreements.
R9-10-808	The objective of the rule is to establish requirements for residence service plans.
R9-10-809	The objective of the rule is to establish minimum requirements for the transport and transfer of a resident to ensure that the resident's health and safety are not compromised as a result of the resident's transport or transfer.
R9-10-810	The objective of the rule is to establish minimum requirements for resident rights.
R9-10-811	The objective of the rule is to establish minimum requirements for resident's medical records.
R9-10-812	The objective of the rule is to establish minimum requirements for behavioral care provided in an assisted living facility.
R9-10-813	The objective of the rule is to establish minimum requirements for behavioral health services provided in an assisted living facility.

[1] The amended language is underlined and located in section 4 of this Five-Year-Review Report.

R9-10-814	The objective of the rule is to establish minimum requirements for personal care services provided in an assisted living facility.
R9-10-815	The objective of the rule is to establish minimum requirements for directed care services provided in an assisted living facility.
R9-10-816	The objective of the rule is to establish minimum requirements for medication services provided in an assisted living facility.
R9-10-817	The objective of the rule is to establish minimum standards for food services.
R9-10-818	The objective of the rule is to establish minimum emergency and safety standards to ensure that an assisted living facility is prepared for an emergency, including how to respond to a resident who has an accident, emergency, or injury that requires the resident receive medical services.
R9-10-819	The objective of the rule is to establish minimum environmental standards.
R9-10-820	The objective of the rule is to establish minimum physical plant standards.

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
R9-10-806	The rule is effective but could be improved by expanding the workforce to allow for a CNA who receives medication training to work as a caregiver.
R9-10-817	The rule is effective but could be improved in subsection (B)(5) by referencing the most up-to-date dietary guidelines set forth by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture.

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
R9-10-803	The rule is consistent with other rules and statutes, however, subsection (C)(1)(i) can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including policies and procedures that cover resident's rights including assisting a resident who does not speak English or who has a physical or other disability to become aware of the resident rights.
R9-10-803 & R9-10-810	The rule is inconsistent with A.R.S. § 36-407.02, as added by Laws 2022, Ch. 179. Rules in these Sections will need to be developed to require an assisted living facility to implement admirative policies and procedures which allow a patient to have religious visitation from a clergy member of their choice.
R9-10-811	The rule is consistent with other rules and statutes; however, the rule can be improved to align more with Title 9, Chapter 10, Article 7, Behavioral Health Residential Facilities by including that a manager shall ensure that an order is dated and authenticated by a medical practitioner or behavioral health professional.

R9-10-816	The rule could be improved by incorporating in R9-10-816(F) the requirements in A.R.S. § 32-1909, regarding the policies and procedures of accepting medications from donors to assisted living facilities as an authorized recipient.
R9-10-820	The rule is inconsistent with Laws 2022, Ch. 34 regarding architectural plans. The Department is no longer approving architectural plans for construction or modification of health care institutions, instead, Health Care Institutions will have to submit a notarized attestation of architectural plans to the Department.

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
R9-10-803	The rule is clear, concise, and understandable, but could be improved by simplifying the language in subsection (C)(1)(j) and correcting an "and" to an "or" since either a manager at an assisted living facility or a resident/resident's representative can initiate termination of residency. In addition, grammatical errors should be corrected in subsection (C)(1)(w) by changing "report" to the plural form, "reports," and adding a comma in subsection (J).
R9-10-806	The rule is clear, concise, and understandable, but could be improved by removing the duplicative language, "documentation of compliance," in subsection (C)(1)(c)(ix).
R9-10-807	The rule is clear, concise, and understandable, but could be improved by correcting grammatical errors in subsections (F)(2), (G), and (H).
R9-10-811	The rule is clear, concise, and understandable, but could be improved by correcting grammatical errors in subsection (C), which include adding necessary articles of speech, "the" and "an."
R9-10-816	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (B) by adding the word "the" where necessary.
R9-10-820	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (F), changing "that" to "than."

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

If yes, please fill out the table below:

Rule	Explanation
R9-10-803	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (M) to include "In addition to the requirements in R9-10-803(C)." Since there have been instances where it is not clear if first aid training is required for caregivers, this change would prompt reference to R9-10-803(C) to clarify caregiver

	requirements for the reader. The Department plans to make this change in the rules to provide better clarity.
R9-10-807	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (G)(1) following to include "the resident's family members, resident's representative, or other individual associated with the resident." In some instances, a resident's family member, resident's representative, or other individual associated with the resident may pose an immediate risk to the health and safety of other residents or staff. Termination of residency in these instances may be necessary to protect the health and safety of residents and staff as well as ensure resident rights are maintained in R9-10-810(B)(2). The Department does not plan to amend the rules as suggested because a resident should not be held responsible for their family members or friends. Facilities have discretion on who is allowed to enter the facility.
R9-10-808	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (E)(4) by replacing all of the existing text with "Residents have access to current news and events" to clarify that residents have access to current news and events but not narrow media sources. The Department does not plan to make the suggested changes at this time since the current rules require assisted-living facilities to provide media sources to residents in a wide variety of ways. A change in the rules as suggested may limit and narrow the way residents receive information regarding current news, social events, and other information.
R9-10-809	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (B) by striking subsection (3) and amending subsection (2) following to include "or arranged by" to simplify and consolidate the rules. In addition, Arizona LeadingAge recommended that the Department amend subsection (C)(2)(c) to include "associated with the transfer process" to clarify what is required to be explained to the resident or resident's representative during an applicable transfer. The Department plans to make the suggested changes to the rules to provide better clarity.
R9-10-810	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (B)(3)(d) to allow for resident relocation under certain circumstances necessary to the continued safe operation of the facility and/or to protect the health, safety, and well-being of residents. The Department believes that the terms and language suggested would be better suited in a residency agreement rather than memorializing it in the resident rights. A change as suggested may provide facilities more leeway to displace residents for multiple reasons without consent which could be a violation of their rights. Therefore, the Department does not plan to amend the rule.
R9-10-815	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (F) to include "for resident's who may wander" as well as amending "the facility" to "the area" throughout section (F). This change would apply the subsequent subsections to only facilities that provide services for residents who may wander. Not all facilities licensed for directed care services provide for resident's who are at risk of wandering. In addition, this change would accommodate facilities that operate among several areas where not all areas house residents who may wander. The Department does not plan to amend the rules as suggested due to the risks of health and safety.
R9-10-816	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (B)(2)(b) following "in A.R.S. § 32-1901" to include "or as described in A.R.S. § 36-446.15." Caregivers receive medication administration training per A.R.S. § 36-446.15 and R4-33-703(C)(1) and therefore should not be included in this documentation requirement. To provide better clarity to the rules, the Department plans to add the cross-reference, A.R.S. § 36-446.15 to the rule.
R9-10-818	The Department received a comment from Arizona LeadingAge recommending that the Department amend subsection (D)(2)(f) by replacing "Any action" with "The actions" to

	clarify the wording and makes the language consistent with the rest of this section. The Department plans to make the suggested change to the rule in order to provide better clarity.

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

The rules in 9 A.A.C. 10, Article 8 were promulgated in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." A.R.S. § 36-401(8) defines an "assisted living facility" as a residential care institution, including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services, or directed care services on a continuous basis. The Department currently licenses and regulates adult foster care homes according to the assisted living facility rules. The rules were recently revised by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019; final rulemaking at 25 A.A.R. 1583, effective October 1, 2019; final expedited rulemaking, at 25 A.A.R. 3481 effective November 5, 2019; and final expedited rulemaking at 28 A.A.R. 869, effective April 8, 2022. The 2019 regular rulemaking designated annual costs and revenues as minimal when $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. The Department believes persons are directly affected by, bear the costs of, or directly benefit from the rules include the Department, assisted living facilities, residents and their families, and the general public.

As of June 6, 2023, the Department reported 1,975 licensed assisted living facilities operating in the state. In the 2022 calendar year, 345 assisted living facilities elected to close, 348 initial applications were approved, 14 initial applications were denied, and 99 licenses were amended. The Department completed 1,870 compliance surveys and 933 complaint investigations surveys. The Department also completed 651 enforcement actions, as a result of the enforcement actions, the Department assessed $720,115 for civil money penalties and revoked seven licenses.

In the expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019, R9-10-819 was amended to add a cross-reference to a pest control program that complies with A.A.C. R3-8-201(C)(4). The Department believes this change in the rules has provided a significant benefit to assisted living homes by clarifying that pest control services shall only be provided by an individual who is a certified applicator. Later in 2019, the Department conducted a second expedited rulemaking, at 25 A.A.R. 3481, effective November 5, 2019. This rulemaking amended three Sections to update cross-references as well as update the name of the International Building Code incorporated by reference, previously named Uniform Building Code. The Department believes these changes provided a significant benefit to assisted living facilities by having updated rules with clearer and more consistent requirements.

In the 2019 regular rulemaking, twelve Sections were amended to implement Laws 2017, Ch. 122, and address issues identified in the 2018 five-year review report to increase clarity and consistency of the rules. Laws

2017, Ch. 122 eliminates renewal licensure for health care institutions and states that a health care institution license remains valid unless subsequently suspended or revoked by the Department or the health care institution fails to pay a licensing fee by a specified due date. The language was amended in R9-10-801 to be consistent throughout the Article, such as removing "behavioral health services" and replacing it with "behavioral care." In R9-10-802 and R9-10-818 language relating to an "initial license" was removed to only reference a general "license." In R9-10-803, clarification was added to the requirement ensuring that policies and procedures are implemented to protect the health and safety of a resident regarding the termination of residency, initiated by the manager of an assisted living facility and a resident or the resident's representative. Other requirements in R9-10-803 were added to require pneumonia vaccinations to be available to residents and ensure the assisted living facility is aware of the whereabouts of a resident. Changes to R9-10-806 included adding requirements to maintain documentation for the caregivers and assistant caregivers working day and to ensure that the manager or a caregiver is available as back-up to provide assisted living services to a resident if the manager or a caregiver assigned to work is not available. Language in R9-10-807 was revised to ensure that a home health agency or hospice service agency is not involved in the care of the individual. R9-10-808 was amended to update the language to reference internet sources and clarify that materials are available to maintain the resident's continued awareness of current news, social events, and other noteworthy information. Terms in R9-10-810 were changed from "admitted" to "accepted" for consistency throughout the Article. R9-10-814 and R9-10-815 were amended to update cross-references, and R9-10-817 was amended to update the dietary guidelines webpage from 2010 to 2015. Lastly, language in R9-10-820 was changed to clarify that an assisted living center complies with standards applicable to services being provided. Additional changes in these Sections were made to add, update, or correct references and citations, correct typographical errors, remove antiquated terms, as well as clarify and consolidate requirements to increase the effectiveness of the rules. As estimated, the Department believes that these changes in the rules for assisted living facilities may have imposed minimal costs but a significant benefit by eliminating renewal licensure, increasing the care for residents, and having clearer more concise rules.

The rules in Article 8 were last revised in 2022 by expedited rulemaking at 28 A.A.R. 869, effective April 8, 2022. In this rulemaking, the Department amended R9-10-802 to implement Laws 2019, Ch. 190. The new legislation required the rules to allow an exemption that removes architectural plans and specifications requirements and physical plant standards for the Arizona Pioneers' Home. The Department believes these changes have provided a significant benefit to the Arizona Pioneers' Home by ensuring residents' health and safety while controlling regulated costs.

Overall, the Department believes that the changes made to the rules may have created a minimal increase in costs, but believes that the benefit of having more effective and understandable rules outweighs any costs incurred. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

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

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

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

The Department completed the action specified in the previous 5YRR by final rulemaking at 25 A.A.R. 1583, effective October 1, 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. 10, Article 8 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

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

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

Federal laws do not apply to the rules in 9 A.A.C. 10, Article 8.

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:

A general permit is not applicable. The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405.

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 some of the rules in 9 A.A.C. 10, Article 8 to address non-substantive matters identified in this five-year review report (report) in a regular rulemaking and plans to submit a Notice of Final Rulemaking to the Council by February 2024.

March 31, 2023

Mr. Thomas Salow, Assistant Director of Licensing
Arizona Department of Health Services
150 North 18th Avenue
Phoenix, Arizona 85007

Subject: Rule Comments – Arizona Administrative Code Title 9, Chapter 10, Article 8,

To Thomas Salow, Assistant Director of Licensing:

Arizona LeadingAge, with the input of licensed Assisted Living Facilities, has reviewed Arizona Administrative Code Title 9, Chapter 10, Article 8. We would like to submit the below comments to the Arizona Department of Health Services (Department) for the record.

We would like to request the Department to consider amending R9-10-803(M) to include "In addition to the requirements in R9-10-803(C)". There have been instances where it is not clear if first aid training is required for caregivers. This proposed amendment prompts reference to R9-10-803(C) to clarify caregiver requirements for the reader.

We would also like to request the Department to consider amending R9-10-807(G)(1) following "Without notice, if the resident" to include "the resident's family members, resident's representative, or other individual associated with the resident". In some instances, a resident's family member, resident's representative, or other individual associated with the resident may pose an immediate risk to the health and safety of other residents or staff. Termination of residency in these instances may be necessary to protect the health and safety of resident's and staff as well as ensuring resident rights are maintained in R9-10-810(B)(2).

We would also like to request the Department to consider amending R9-10-808(E)(4) by replacing all of the existing text with "Residents have access to current news and events". This amendment clarifies that residents have access to current news and events but does not narrow media sources.

We would also like to request the Department to consider amending R9-10-809(B) by striking subsection (3) and amending subsection (2) following "Transportation provided for" to include "or arranged by". This proposed amendment will consolidate steps in the rules.

We would also like to request the Department to consider amending R9-10-809(C)(2)(c) following "A caregiver explains risks and benefits" to include "associated with the transfer process". This proposed amendment will clarify what is required to be explained to the resident or resident's representative during an applicable transfer.

We would also like to request the Department to consider amending R9-10-810(B)(3)(d) by striking subsection (ii) and replace with "Refuse relocation within the assisted living facility, except for the following reasons: (1) There is a change in the residents ability to pay for private or upgraded accommodations; or (2) There is a need to relocate a resident for renovations, repairs, or construction activity; or (3) There is a need to move a resident to protect the health and safety of a resident; or (4) When there are roommate disagreements and two or more attempts to resolve the conflict have been documented". This proposed amendment will allow for resident relocation under certain circumstances necessary to the continued safe operation of the facility and/or to protect the health, safety, and wellbeing of residents.

We would also like to request the Department to consider amending R9-10-815(F) following "shall ensure" to include "for resident's who may wander" as well as amending "the facility" to "the area" throughout section (F). The first proposed amendment will apply the subsequent subsections to only apply to facilities which provide services for residents who may wander. Not all facilities licensed for directed care services provide for resident's who are at risk of wandering. The second proposed amendment will accommodate facilities which operate among several areas where not all areas house residents who may wander.

We would also like to request the Department to consider amending R9-10-816(B)(2)(b) following "in A.R.S. § 32-1901" to include "or as described in A.R.S. § 36-466.15". Caregiver's receive medication administration training per A.R.S. § 36-446.15 and R4-33-703(C)(1) and therefore should not be included in this documentation requirement.

We would also like to request the Department to consider amending R9-10-818(D)(2)(f) by replacing "Any action" with "The actions". This proposed amendment clarifies the wording and makes the wording consistent with the rest of this section.

Please reference the attached rules document outlining all of the above proposed amendments in redline format.

Respectfully,

Pam A. Koester

Pam Koester, Chief Executive Officer
Arizona LeadingAge

TITLE 9. HEALTH SERVICES

CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

April 2019

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 10. HEALTH CARE INSTITUTIONS: LICENSING

1. An identification of the rulemaking

In order to ensure public health, safety, and welfare, Arizona Revised Statutes (A.R.S.) §§ 36-405 and 36-406 require the Arizona Department of Health Services (Department) to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules for licensing health care institutions in Arizona Administrative Code (A.A.C.) Title 9, Chapter 10. Laws 2017, Ch. 122, eliminates renewal licensure for health care institutions and states that a health care institution license remains valid unless subsequently suspended or revoked by the Department or the health care institution fails to pay a licensing fee by a specified due date. Laws 2017, Ch. 122, also requires the Department to establish rules regarding the payment of licensing fees and modifies information and documentation required to be submitted as part of a licensing application. Laws 2017, Ch. 134, requires the Department to develop rules related to recidivism reduction staff in adult residential care institutions. In this rulemaking, the Department is revising the rules in 9 A.A.C. 10 to comply with Laws 2017, Ch. 122. As part of the rulemaking, the Department is also making other changes to rules in 9 A.A.C. 10 to improve efficiency and effectiveness, as described in five-year-review reports approved by the Governor's Regulatory Review Council, including the addition of requirements related to recidivism reduction.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

- The Department
- Health care institutions
- Personnel members
- Patients/residents of a health care institution and their families
- General public

3. Cost/Benefit Analysis

The new rules contain requirements being made to comply with statutory changes. For Laws 2017, Ch. 122, these include:

- Removing references to "initial" and "renewal" applications and licenses;

- Making documentation submission requirements, which had been associated with renewals, now associated with annual licensing fees;
- Removing the exclusion of a behavioral health facility from requirements in A.R.S. § 36-421(F);
- Adding requirements for submission of annual licensing fees;
- Exempting a history of nonpayment of fees as grounds for license denial;
- Requiring the Department to notify a licensee that annual licensing fees are due;
- Adding provisions for a grace period and late fee;
- Adding provisions for an alternate licensing fee due date; and
- Specifying circumstances when a license becomes invalid.

For Laws 2017, Ch. 134, related to recidivism reduction, these include:

- Adding adult residential care institution as a subclass of behavioral health residential facilities;
- Clarifying that an applicant must be authorized to perform recidivism reduction services;
- Clarifying fingerprinting requirements and requirements for background checks for recidivism reduction staff;
- Adding requirements for a personnel member, who is recidivism reduction staff; and
- Adding a new Section specific to recidivism reduction services.

In addition to these changes, many of the changes being made as part of this rulemaking are in response to issues described in five-year-review reports approved by the Governor's Regulatory Review Council (Council) of Articles in 9 A.A.C. 10, for which an expedited rulemaking would have been conducted if this rulemaking had not been open. Therefore, they are clarifying in nature, will reduce a regulatory burden while achieving the same regulatory objective, comply with regulatory requirements, and help eliminate confusion on the part of the regulated communities. These changes include:

- Clarifying the use of terms defined in R9-10-101 that are used in the Chapter; (Three definitions are being removed; a citation to A.R.S. § 36-439 is added to include definitions related to colocation; 12 definitions are added, including seven moved from other Sections in the Chapter and two replacing definitions being removed; and 22 definitions are revised.)
- Correcting typographical errors, grammatical errors, and cross-references;
- Correcting the inconsistent uses of terms;
- Clarifying when an e-mail address is needed;
- Separating requirements for two persons into different subsections;

- Clarifying for which modifications of a health care institution the requirements in R9-10-104 are applicable;
- Clarifying license application requirements (including when "address" refers to "mailing address" and that not all health care institutions have a "licensed capacity");
- Clarifying that an applicant for a license does not receive the license until licensing fees are paid;
- Clarifying for what changes a licensee is required to notify the Department, adding a requirement for documentation of the change, and removing requirements related to the Department's approval of a change because no approval is required;
- Adding a list of types of modifications and for which types of modifications the submission of architectural plans and specifications is required;
- Clarifying that noncompliance with the applicable requirements in A.R.S. Title 36, Chapter 4, and this Chapter is grounds for denial, suspension, or revocation of a license;
- Clarifying requirements for a tuberculosis infection control program;
- Clarifying that a transport to a receiving hospital may come from a health care institution besides a hospital;
- Clarifying documentation requirements for a hospital related to a surgical procedure on a patient;
- Clarifying requirements for a "seclusion room," including using "secure hold room," to address a written criticism of the rules;
- Updating dietary guidelines and incorporations by reference to the current versions;
- Making the rules consistent with A.A.C. R3-8-201(C)(4);
- Moving requirements for transfer of a resident of a nursing care institution from R9-10-409 to R9-10-408;
- Clarifying that a behavioral health residential facility must be authorized to provide personal care services or an outdoor behavioral health care program;
- Clarifying requirements for behavioral health services in a behavioral health residential facility; and
- Substituting the phrase "Department-provided format" for consistency with other Department rules and to better allow for electronic submission of information/applications.

Other changes being made in response to issues identified in five-year-review reports of Articles in 9 A.A.C. 10 that were approved by the Council may impose a cost on stakeholders and could not have been made through expedited rulemaking. The costs associated with these

changes, as well as the benefits provided by the changes being made, are described below. No new FTEs will be required due to this rulemaking. Annual costs/revenues 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.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Eliminating license renewals	None	Moderate
	Clarifying requirements	None	Significant
	Adding information for an application to better enable evaluation and processing	None	Significant
	Reducing the time for an applicant to supply information or documents	None	Significant
	Reinstating fees	None	Substantial
	Requiring a personnel member who can communicate in English to be on the premises	None	Significant
B. Privately Owned Businesses			
Health care institutions	Eliminating license renewals	None	Significant
	Reducing the time for an applicant to supply information or documents	None-to-minimal	None
	Adding information for an application or for notification and clarifying requirements	None-to-minimal	Significant
	Revising the definition of "behavioral health professional"	Minimal-to-substantial	None/significant
	Reinstating fees	None-to-moderate	None
	Requiring additional information about satellite facilities to be submitted	None-to-minimal	Significant
	Clarification of "secure hold room"	None	Minimal-to-moderate
	Eliminating an apparent inconsistency with respect to the use of restraints in Article 4	Minimal-to-moderate	Significant
	Adding requirements for establishing an acuity plan and for determining a patient's acuity in a behavioral health inpatient facility	None-to-substantial	None
	Reducing the time for patient/resident assessment and documentation in a behavioral health inpatient facility	Minimal-to-moderate	Significant
	Allowing medical services to be provided under the direction of a registered nurse practitioner	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility	Minimal-to-moderate	None
	Reducing the time for patient/resident assessment and documentation in a behavioral health residential facility	Minimal-to-moderate	Significant
	Requiring a personnel member who can communicate in English to be on the premises	None-to-minimal	None
	Specifying requirements for providing recidivism reduction services	None-to-substantial	None-to-substantial
	Requiring an assisted living facility to have methods to be aware of a resident's general or specific whereabouts	Minimal	Significant
	Adding requirements related to documentation of staffing and for ensuring backup	Minimal	Significant
C. Private Persons and Consumers			
Personnel members	Clarifying requirements	None	Significant
	Adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility	None-to-minimal/ minimal-to-moderate	Significant/ minimal-to-moderate
	Requiring a personnel member who can communicate in English to be on the premises	None/significant	None
	Specifying requirements for recidivism reduction staff to provide services	None	Significant
Patients/residents of health care institutions and their families	Having rules that are easier to understand and more effective	None	Significant
	Requiring a personnel member who can communicate in English to be on the premises	None	Significant
	Reducing the time for patient/resident assessment and documentation	None	Significant
	Adding requirements for establishing an acuity plan and for determining a patient's acuity	None	Significant
	Adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility	None	Significant
	Eliminating inconsistency with respect to the use of restraints	None	Significant
	Requiring an assisted living facility to have methods to be aware of a resident's general or specific whereabouts	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Adding requirements related to documentation of staffing and for ensuring backup	None	Significant
	Helping ensure the safety of residents receiving recidivism reduction services	None	Significant
General public	Having rules that are easier to understand and more effective	None	Significant
	Having health care institutions providing better treatment	None	Significant

- **The Department**

The Department currently licenses over 6,400 facilities as one of over 18 classes/subclasses of health care institutions. As of February 2019, these include: 110 hospitals, 54 behavioral health inpatient facilities, 146 nursing care institutions, 3 recovery care centers, 7 hospice inpatient facilities, 208 outpatient surgical centers, 2,472 outpatient treatment centers, one behavioral health specialized transitional facility, 3 abortion clinics, 3 substance abuse transitional facilities, 576 behavioral health residential facilities, 171 hospice service agencies, 217 home health agencies, 2,084 assisted living facilities, 21 adult day health care facilities, 13 behavioral health respite homes, 45 adult behavioral health therapeutic homes, 239 counseling facilities, and 43 unclassified health care institutions. For all these facilities, the Department will no longer need to process renewal licenses once the new rules become effective. According to the requirements in the new rules, these health care institutions must only verify information about the facility and pay an annual licensing fee for their licenses to remain active. The Department anticipates that this fee will be paid through an online data system, on which a licensee will also be able to verify the information for the facility currently in the Department's records. The Department anticipates that this change to perpetual licenses will provide a moderate benefit to the Department through less staff time being spent processing renewal applications. Changes to clarify requirements, as described above, may provide a significant benefit to the Department through less staff time being spent answering questions about the rules.

An applicant will still need to submit an application according to R9-10-105 and, when applicable, according to R9-10-104 when initially applying for a health care institution license. The requirements relating to the application packet have been revised in the new rules so an applicant will now need to indicate the requested licensed capacity for the facility only if applicable, and will need to indicate the respite capacity if applicable. Some classes/subclasses of

health care institutions, such as outpatient treatment centers, outpatient surgical centers, home health agencies, and hospice service agencies do not have a licensed capacity. Only outpatient treatment centers and behavioral health residential facilities providing respite services to children on the premises who do not stay overnight could have a respite capacity. The requirement to include the requested respite capacity for these classes of health care institution was inadvertently left out of the 2016 exempt rulemaking for colocation and respite to implement Laws 2015, Ch.158. A hospital applicant for a single group license will also need to provide, for each satellite facility or accredited satellite facility under the single group license, the class or subclass of the satellite facility and a list of services to be provided at the satellite facility. This change will eliminate the need for Department staff to contact the applicant to get this information before processing the application. A licensee will also need to notify the Department when adding or removing a satellite facility or accredited satellite facility under a single group license to allow the Department to correct records and, if applicable, expect a new application from a health care institution that will no longer be a satellite facility. Because the Department currently notifies licensees of upcoming license renewal due dates, and plans to use the same method when notifying licensees of annual licensing fee due dates, the new rules clarify that an applicant must supply an e-mail address for the facility. The Department believes that the changes to the application packets and notification requirements may provide a significant benefit to Department.

Under the current rules, an applicant has 180 calendar days, from the date the Department notifies the applicant that an application is not complete, to supply the missing information/ documentation before the application is considered withdrawn. This time-frame was put in place because an application for licensure was not considered complete until the Department received documentation of the Department's approval of architectural plans and specifications, under R9-10-104. An application packet submitted according to R9-10-104 had to be submitted, and was supposed to be approved, before a licensing application was submitted. The extended time to supply missing documentation was to accommodate the review and approval of an application packet submitted under R9-10-104 at the same time as an application packet for licensing was submitted. Under the new rules, an application would be considered complete if it contained either the application packet for approval of architectural plans and specifications in R9-10-104(A) or documentation of the Department's approval. Therefore, there is no longer a need for an extended time to supply missing information/documents, and the Department is shortening this time-frame to 60 calendar days. Similarly, the Department is keeping the time-frame of 120 calendar days for an applicant to submit information or documentation requested during the

substantive review time-frame for a licensing application or application for a modification requiring architectural plans and specifications, but reducing the time for an applicant to submit information or documentation requested during the substantive review time-frame for a modification not requiring architectural plans and specifications or for a request for an alternate fee due date from 120 calendar days to 30 calendar days. The Department anticipates that these changes may provide a significant benefit to the Department.

As part of an exempt rulemaking of 9 A.A.C. 10, effective July 1, 2014, the Department had added several fees to R9-10-106. These included a fee of $94 times the licensed occupancy for a behavioral health facility providing behavioral health observation/stabilization services; a fee of $91 times the licensed occupancy for a hospital or an outpatient treatment center providing behavioral health observation/stabilization services, including an outpatient treatment center under a single group license; a fee of $91 times the number of dialysis stations for an outpatient treatment center providing dialysis services, including an outpatient treatment center under a single group license; and a fee of $365 for each of a hospital's satellite facilities under a single group license. The Department did not complete a regular rulemaking to remake these fees, so the fees expired under A.R.S. § 41-1008(E) on June 30, 2016. As part of the current rulemaking, the Department is reinstating these fees.

Based on the number of health care institutions that are currently authorized to provide these services and would begin paying the reinstated fees, the Department anticipates that the Department may receive approximately $270,500 in additional revenue. For the last few years, the Department had greater expenditures for health care institution licensing than funds received, creating a shortfall. For example, in FY 2018, the Department received $6,200,732 for health care institution licensing. Expenditures totaled $6,359,109.04 without indirect costs, which were waived by the Department. If indirect costs had been included, the Department's expenditures in FY 2018 for health care institution licensing would have been $7,020,918.36. Reinstatement of these fees may help offset some of the shortfall.

Recently, the Department has experienced several/many(?) instances, especially with smaller behavioral health residential facilities, in which a surveyor from the Department arrived at a behavioral health residential facility and was not able to communicate with any personnel member on the premises. This situation caused surveyors to wait around for extended periods of time or to leave and return at another time when someone who could communicate in English was present, resulting in inefficiency and additional costs to the Department. Therefore, in the new rules, the Department is adding a requirement that a personnel member who is able to read, write, understand, and communicate in English must be on the premises of the behavioral health

residential facility. The requirement is similar to a requirement for assisted living facilities in the current rules. The Department anticipates that this new requirement will provide a significant benefit to the Department.

- **Health care institutions**

  As stated above, the Department currently licenses over 6,400 facilities as health care institutions. Under the current rules, each must submit a renewal application. The changes being made to the rules to comply with Laws 2017, Ch. 122, eliminate the need for renewal license applications. The provisions in the new rules for a grace period, with payment of a late payment fee of $250, and for obtaining an alternate licensing fee due date may be of particular benefit to a health care institution. The $250 late payment fee is consistent with the civil money penalty currently imposed on a facility that does not submit a timely renewal application. The Department believes that these changes, required by statutory changes rather than imposed by the Department, may provide a significant benefit to a health care institution.

  Because an application for approval of architectural plans and specifications may now be submitted as part of a licensing application, the Department is shortening the time-frame for submitting missing components of an application packet from 120 calendar days to 60 calendar days, but the Department is keeping the time-frame of 120 calendar days for an applicant to submit information or documentation requested during the substantive review time-frame for a licensing application or application for a modification requiring architectural plans and specifications. The Department is also reducing the time for an applicant to submit information or documentation requested during the substantive review time-frame for a modification not requiring architectural plans and specifications or for a request for an alternate fee due date from 120 calendar days to 30 calendar days. The Department anticipates that an applicant may incur at most minimal costs due to these changes.

  Many of the changes being made as part of this rulemaking clarify current requirements. Others, such as a requirement for an e-mail address, are required to facilitate electronic communication with licensees. Requirements relating to the application packet in R9-10-104 or R9-10-105 have been revised in the new rules so an applicant will now need to indicate the requested licensed capacity for the facility only if applicable, and will need to indicate the respite capacity if applicable. Under the current rules and statutes, a licensee is required to notify the Department of certain changes that affect a license, as specified in R9-10-109. The new rules list changes for which notification is required and clarify that a licensee is required to submit documentation supporting the change. For example, a health care institution is required to notify the Department of a change in the name of the health care institution. As long as there is not a

change in the governing authority, a name change just results in the issuance of a new license including the new name. However, a name change associated with a change in ownership would require a new license application to be submitted according to R9-10-105. Documentation showing for which type of name change notification is being made needs to be included with the notification to distinguish the two. The Department estimates that a health care institution may incur at most minimal costs for providing documentation when notifying the Department of a change affecting a license or for other clarifying changes and that the clarifications may provide a significant benefit to a health care institution.

However, the Department anticipates that other changes related to clarifications may cause a health care institution that was not interpreting a requirement consistent with the Department's understanding to incur a cost for compliance. For example, a licensee is required by R9-10-110 to submit a request to the Department for approval of a modification to the health care institution. The new rules clarify what constitutes a modification by listing circumstances that are considered modifications, consistent with the current and revised definition of "substantial," and specify those for which approval of architectural plans and specifications are required, rather than leaving a licensee confused about what to do when planning one of these changes. The new rules also clarify the documentation required to demonstrate that a requested modification complies with applicable requirements in the Chapter. The Department believes that a health care institution may incur minimal-to-moderate costs due to these changes and may receive a significant benefit from the clarity of the rules.

A licensee is required to comply with R9-10-109 and R9-10-110 independent of license renewal, but the Department often learns of some changes that should have been divulged under R9-10-109 or R9-10-110 at the time that a license is renewed, as part of the renewal application. Since, under perpetual licensing, no renewal application will be submitted, the Department plans to require a health care institution to verify information about the health care institution in the Department's licensing database records and to initiate actions to comply with R9-10-109 or R9-10-110, if applicable, before paying the annual licensing fee. A health care institution may incur a late payment fee if the health care institution waits until the last minute before trying to pay the annual licensing fee and cannot verify that the information in the Department's records is accurate because changes or modifications have been made and the health care institution has failed to comply with requirements in R9-10-109 or R9-10-110. If the health care institution waits until the end of the grace period before attempting to pay the annual licensing fee, the license of the health care institution may even become void in such a circumstance. However, the Department will be informing the health care institution of the need to pay the annual licensing

fee and the licensing fee due date well before the licensing fee due date, to give the health care institution plenty of time to comply with R9-10-109 or R9-10-110, if necessary, before the licensing fee due date. While this requirement may result in a health care institution incurring up to substantial costs/loss of revenue, the cause would be due to the inaction of the health care institution rather than to the new rules.

As part of the 2013 exempt rulemaking incorporating behavioral health facilities into 9 A.A.C. 10, the Department defined "behavioral health professional" as: "an individual licensed under A.R.S. Title 32 whose scope of practice allows the individual to:

a. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or

b. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101." The definition was changed to the current definition during the 2014 exempt rulemaking. Because so many of the functions required in rule of a "behavioral health professional" are outside the scope of a registered nurse without additional training/certification, the Department believed that including a registered nurse, without additional qualifications, in the list of licensed individuals included as a "behavioral health professional" in 2014 was inappropriate, and the Department is correcting the error as part of this rulemaking. The revised definition of "behavioral health professional" includes a registered nurse with a psychiatric-mental health nursing certification or one year of experience providing behavioral health services. During inspections of health care institutions, the Department has found few registered nurses serving in the role of "behavioral health professional," and those few had additional certification credentials or experience. Therefore, the Department believes that this change will have a minimal impact on health care institutions as a whole, although a health care institution using a registered nurse without additional certification credentials or experience in the capacity of a behavioral health professional may incur up to a substantial cost to comply with this change. This cost may be offset because the health care institution would be providing better, more appropriate care for its patients, resulting in a significant benefit to the health care institution.

Because the fees in R9-10-106(C)(3), (6), and (7) and (D) were not remade within two years after the 2014 exempt rulemaking, they have not been in effect since July 1, 2016. In this rulemaking, the Department is reinstating these fees. The fee of $94 times the licensed occupancy in subsection (C)(3) affects behavioral health facilities providing behavioral health observation/ stabilization services. Currently, there are eight behavioral health facilities providing behavioral health observation/stabilization services, with a licensed occupancy ranging from 8 to 44. Therefore, by reinstating this fee, a behavioral health facility may incur between $752 and $4,136

in additional licensing costs. Similarly, there are no hospitals and five outpatient treatment centers authorized to provide behavioral health observation/stabilization services, but only two of them have a licensed occupancy. The two outpatient treatment centers have licensed occupancies of 15 and 40. Therefore, the Department estimates that an outpatient treatment center providing behavioral health observation/stabilization services may incur between $1,365 and $3,640 in additional licensing costs with the reinstatement of fees in subsection (C)(7)(b).

An outpatient treatment center providing dialysis services will incur a fee of $91 times the number of dialysis stations when R9-10-106(C)(7)(a) is reinstated. The Department believes that there are 118 outpatient treatment centers currently providing dialysis services, with the number of dialysis stations in each ranging from zero (for outpatient treatment centers providing education and assistance for dialysis in a patient's home) to 36. Of the 118 outpatient treatment centers providing dialysis services, 71 have 21 or fewer dialysis stations. These outpatient treatment centers would incur minimal additional licensing costs due to the reinstated fees. The remaining 47 outpatient treatment centers have between 22 and 36 dialysis stations and would be expected to incur between $2,002 and $3,276 in additional licensing costs due to the reinstated fees.

Of the 110 hospitals licensed by the Department, 51 have satellite facilities that operate under the hospital's single group license, with 15 of these having only one satellite facility and 37 having five or fewer satellite facilities. Only five hospitals have 10 or more satellite facilities, with the hospital with the greatest number having 18 satellite facilities. Therefore, when the fee of $365 under R9-10-106(D) for each of a hospital's satellite facilities is reinstated, the Department anticipates that 37 hospitals may incur a minimal increased cost and 14 may incur a moderate increase in costs, with the hospital with the greatest number of satellite facilities paying an additional $6,570 in additional fees.

The new rules also clarify in R9-10-202(B) and (C) that a governing authority applying for a single group license under A.R.S. § 36-422(F) or (G) is required to include the class or subclass of the satellite facility and the list of services to be provided at the satellite facility. By clarifying this requirement in the rules, a hospital will be able to provide this information as part of an application, rather than after an inquiry by Department staff. The new rules are also changing the requirement in R9-10-217 for a "seclusion room," in response to a written criticism of the rules noted in the five-year-review report for Article 2. The new rules clarify that this space does not have the same characteristics as a room used for seclusion in a hospital's psychiatric unit. Instead, the new requirement is for a "secure hold room" in the emergency department, as described in the American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and

Construction of Health Care Facilities, incorporated by reference in A.A.C. R9-1-412. The Department anticipates that a hospital may incur up to minimal costs due to the additional information being provided at the time of application and with the annual licensing fees, and may receive a significant benefit from the clarity of the rules and minimal-to-moderate benefit from not having to provide additional information after the application is submitted or incorrectly designing a "secure hold room" with the same characteristics as a room used for seclusion in a psychiatric unit of the hospital.

During the five-year review of the rules in Article 4, the Department noticed an apparent inconsistency with respect to the use of restraints in a nursing care institution. While R9-10-410(B)(3)(i) states that a resident is not subjected to restraint in a nursing care institution, the term is used in both R9-10-414(A)(1)(d)(xvii) and R9-10-415(2). In the new rules, the reference in R9-10-414(A)(1)(d)(xvii) has been removed, and R9-10-415(2) has been changed to clarify that this subsection pertains to how the nursing care institution will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual. The Department believes that a nursing care institution that was inappropriately using restraints may incur minimal-to-moderate costs to change the procedures being followed and that this clarification may provide all nursing care institutions with a significant benefit.

Several changes described in the five-year-review report for Article 3 may cause a behavioral health inpatient facility to incur additional costs but are necessary to protect the health and safety of patients. During inspections and the investigations of complaints, the Department has found that the seriousness of the behavioral health issues of patients admitted into a behavioral health inpatient facility is higher than anticipated when the rules were originally made. This has resulted in adverse events for patients, including patient deaths. The Department believes that adding requirements for establishing an acuity plan, for determining a patient's acuity, and for staffing based on patient acuity may help prevent adverse events. Although R9-10-306(B)(3) currently requires a behavioral health inpatient facility to provide sufficient personnel members to provide services, meet the needs of a patient, and ensure the health and safety of a patient, the new requirements may assist a behavioral health inpatient facility to better understand staffing needs and comply with this requirement. The Department estimates that these changes may cause a behavioral health inpatient facility to incur as much as a substantial increase in cost, especially if additional personnel members must be hired to adequately staff the behavioral health inpatient facility to meet the needs of the patients admitted to the behavioral health inpatient facility.

Similarly, reducing the time to perform a medical history and physical examination on a patient after admission to a behavioral health inpatient facility and to document the results, from

within 72 hours to within 24 hours after admission, may improve patient health and safety. The added requirement for assessing a patient to identify the behavioral health services needed by a patient whenever a patient has a significant change in condition or experiences an event that affects treatment may also improve the health and safety of patients, as well as improve the efficacy of treatment. To ensure that the correct information about a patient's condition is available to personnel members, the new rules reduce the time for documentation of a patient's behavior health assessment from within 48 hours to within 24 hours after completing the assessment, and for a patient receiving crisis services from within 24 hours to within eight hours after completing the assessment. The Department anticipates that a behavioral health inpatient facility may incur minimal-to-moderate costs to implement these changes, but receive a significant benefit from providing better, more appropriate patient care.

To offset some of these costs, the new rules allow medical services in a behavioral health inpatient facility to be provided under the direction of a registered nurse practitioner, as well as under a physician. The new rules also include more options, in R9-10-306(J), for a behavioral health inpatient facility to ensure access to a physician or registered nurse practitioner, but it is possible that changes in the requirements related to an on-call physician or registered nurse practitioner, being made to protect the health and safety of patients, may also cause a behavioral health inpatient facility to incur minimal-to-moderate additional costs. The ability to use telemedicine may be especially helpful to behavioral health inpatient facilities in more rural areas of Arizona. To ensure that an on-call physician or registered nurse practitioner can provide medical services if needed within a reasonable time to protect the health and safety of patients, the new rules require the on-call physician or registered nurse practitioner to be on the premises within 30 minutes after being called and requested to come and adds documentation requirements for an on-call physician or registered nurse practitioner. The Department believes that these changes may cause one behavioral health inpatient facility to incur minimal costs to change procedures and may provide a significant benefit to another behavioral health inpatient facility.

The new rules also contain changes, described in the five-year-review report for Article 7, that are necessary to protect the health and safety of residents but may cause a behavioral health residential facility to incur additional costs. For example, the Department has learned of several instances of harm to a resident due to the resident not receiving an adequate assessment of the resident's condition and needs in a timely manner. The Department believes that allowing a resident to go up to seven days before a medical practitioner performs a medical history and physical examination or a registered nurse performs a nursing assessment on a resident is too long to ensure the health and safety of a resident and has shortened this period to a maximum of 72

hours. This will allow an individual who is admitted on a Friday to receive an assessment on Monday, rather than requiring a behavioral health residential facility to incur additional costs for conducting an assessment on a weekend. The new rules also reduce the time for documenting an interval note from within 48 hours to within 24 hours after new information is obtained to ensure personnel members have up-to-date information about a resident. Although the Department believes that most well-run facilities already meet these standards and may receive a significant benefit from providing better, more appropriate patient care, the Department anticipates that these changes may impose a minimal-to-moderate additional cost on a behavioral health residential facility that was waiting until the maximum time limit to perform these actions.

As mentioned above, the new rules require that a personnel member who is able to read, write, understand, and communicate in English must be on the premises of the behavioral health residential facility. This requirement is similar to a requirement for assisted living facilities in the current rules. The Department is unaware of any behavioral health residential facility that has no English-speakers as personnel members. Those behavioral health residential facilities at which the Department's surveyors encountered no one who could communicate in English had other personnel members who were not working that day who could communicate in English. Therefore, the Department believes that this new requirement may cause a behavioral health residential facility to incur at most minimal additional costs to ensure that a personnel member who can communicate in English is scheduled to work on each shift.

In addition to the changes described above, the five-year-review report for Article 7 states that these rules are inconsistent with Laws 2017, Ch. 134, because the rules do not address requirements relevant to a behavioral health residential facility that provides recidivism reduction services. In these new rules, the Department has added in R9-10-102 the adult residential care institution subclass of behavioral health residential facilities; clarified in R9-10-702 that an applicant must be authorized to perform recidivism reduction services; clarified in R9-10-703, R9-10-706, and R9-10-717.01 fingerprinting requirements and requirements for background checks for recidivism reduction staff; added in R9-10-706 requirements for a personnel member who is recidivism reduction staff; and added in R9-10-717.01 a new Section specific to recidivism reduction services. A.R.S. § 36-411.01(A) mentions an "adult residential care institution subclass" for the provision of recidivism reduction services. Therefore, the Department plans to make "adult residential care institutions" a subclass of behavioral health residential facilities. R9-10-101 has been revised to add a definition for "adult residential care institution," and "adult residential care institution" has been added as a subclass of health care institution in R9-10-102. Making adult residential care institutions its own subclass may also help prevent

recidivism reduction staff from interacting with residents other than those receiving recidivism reduction and co-mingling of residents who are receiving recidivism reduction services with residents admitted for other reasons. Therefore, a behavioral health residential facility in which recidivism reduction services will be provided would need to be relicensed as an adult residential care institution. Any costs imposed by these requirements originate from statutes rather than rule and would pertain only to those facilities that voluntarily apply for approval to become the adult residential care institution subclass of behavioral health residential facilities. The Department anticipates that these health care institutions may incur up to substantial costs to comply with the requirements, but may also receive substantial benefits/increased revenue from being able to hire and retain individuals who cannot comply the fingerprinting requirements in A.R.S. § 36-411.

Changes are also being made to requirements in R9-10-803 and R9-10-806 of the new rules, consistent with the five-year-review report for Article 8. The new rules require, in R9-10-803(C)(1)(m), policies and procedures by which an assisted living facility is aware of the general or specific whereabouts of a resident, based on the level of assisted living services provided to the resident and the assisted living services the assisted living facility is authorized to provide. This requirement is closely associated with the ability of a facility to carry out the service plan for a resident. If a resident's service plan requires a caregiver to assist a resident with medication or provide personal care services to a resident, the caregiver cannot comply with requirements in the service plan if the resident is not on the premises. Nor can a caregiver assist a resident with medication at a specific time, according to the resident's prescription, if the resident is not where the resident is expected to be at that time and no one has any idea of the resident's whereabouts. Furthermore, requiring that a facility have policies and procedures that cover how the facility is aware of a resident's whereabouts may help prevent a resident going out on a patio at 10:00 a.m. in August, falling asleep, and not being discovered until 2:00 p.m., by which time the resident may have suffered heat stroke or other serious medical conditions. The requirement is also consistent with the definition in A.R.S. § 36-401 of "supervisory care services," which includes "general supervision, including daily awareness of resident functioning and continuing needs, the ability to intervene in a crisis and assistance in the self-administration of prescribed medications." A caregiver cannot intervene in a crisis if the caregiver does not know where a resident is. The Department believes that a facility is in the best position to devise methods to address this, based on the level of services being provided to the resident, without intruding on the resident's privacy, and that these methods will differ from one assisted living facility to another. The policies and procedures would not include individuals in independent living situations associated with an assisted living facility, but would apply to residents receiving supervisory care services, personal

care services, or directed care services on a continuous basis. The Department anticipates that developing these policies and procedures may cause an assisted living facility to incur minimal costs, but also to receive a significant benefit from providing better care to residents.

In R9-10-806(A)(7), the new rules require an assisted living facility to document staffing but leave the method by which the assisted living facility accomplishes this end up to the assisted living facility. The Department expects that the method could vary from one facility to another. The rule change would enable the Department to determine if there were enough staff to meet the needs of residents and to know who was at the facility when investigating a complaint. A related change is being made in R9-10-806(B)(3) for assisted living homes, which provide services to 10 or fewer residents and often have only one or two caregivers on the premises at a time. The new rules require the manager of an assisted living home shall ensure that there is a plan for back-up to ensure that assisted living services are provided to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted living services. This requirement may prevent residents of an assisted living home from being left unattended if staff assigned to work become ill or have an emergency that requires them to leave suddenly. The Department expects that these changes may cause an assisted living facility, including an assisted living home, to incur minimal costs and to receive a significant benefit from providing better care to residents.

- **Personnel members**

The Department anticipates that the changes clarifying requirements may provide a significant benefit to a personnel member of a health care institution by making it easier to understand and comply with the requirements. The changes adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility may cause a personnel member to take a little longer when communicating with a physician or registered nurse practitioner, and perhaps incurring minimal costs. A personnel member who is an on-call physician or registered nurse practitioner may incur minimal-to-moderate costs from having to be on the premises of a behavioral health inpatient facility within 30 minutes after being summoned to come, but they may also receive a minimal-to moderate benefit from being able to respond through teleconferencing.

The change in the new rules requiring a personnel member who can communicate in English to be on the premises of a behavioral health residential facility may cause a personnel member, whose shift is moved to ensure compliance with the requirement, to incur some costs or inconvenience, but the amount or cause cannot be determined. Nor would the cost or inconvenience be directly tied to the requirement but be more related to how the personnel

member's employer chooses to comply with the new requirement.

Individuals working in an adult residential care institution, which will be a subclass of behavioral health residential facilities, are required by A.R.S. § 36-411 to have a fingerprint clearance care or apply for a fingerprint clearance card within twenty working days after employment or beginning volunteer work at the facility. Laws 2017, Ch. 134, added A.R.S. § 36-411.01, which allows an individual to be employed as recidivism reduction staff, after having been denied a fingerprint clearance card, under specified conditions. In the rules, the Department has specified how an adult residential care institution can ensure that an applicant for recidivism reduction staff can meet those conditions. The Department believes that specifying these methods may provide some consistency in an evaluation by a prospective employer and may provide a significant benefit to an individual applying to become recidivism reduction staff.

- **Patients and residents of health care institutions and their families**

The Department believes that the rule changes being made to improve the clarity of the rules, as well as those improving the efficiency and effectiveness of the rules, will help personnel members to better understand requirements in the rules and, thus, better comply with the requirements. A patient or resident of a health care institution may receive better services from these individuals as a result of personnel members better complying with requirements in the rules. Thus, the rule changes may provide a significant benefit to a patient or resident. A resident of a behavioral health residential facility and family members may also receive a significant benefit from the requirement for a personnel member who can communicate in English to be on the premises, especially if the resident or family member only understands English.

Several requirements are being added by the new rules to improve the health and safety of patients/residents. These include reducing the time for patient/resident assessment and documentation, adding requirements for a behavioral health inpatient facility to establish an acuity plan and determine a patient's acuity, adding options for ensuring access to a physician or registered nurse practitioner for a behavioral health inpatient facility, eliminating an apparent inconsistency with respect to the use of restraints in a nursing care institution, requiring an assisted living facility to have methods to be aware of a resident's general or specific whereabouts, and adding requirements for assisted living facilities related to documentation of staffing and for ensuring backup. The Department anticipates that these changes may provide a significant benefit to a patient/resident and their families.

The requirements in the new rules specific to recidivism reduction services, to comply with Laws 2017, Ch. 134, may also help ensure the safety of residents receiving recidivism reduction services. They may also help improve the effectiveness of recidivism reduction services by

including evaluation criteria for successful completion of treatment by recidivism reduction staff and making an evaluation somewhat consistent. The Department believes that these requirements may provide a significant benefit to an individual receiving recidivism reduction services and their families.

- **General public**

  The Department believes that the changes being made in the new rules will make the rules more effective and enable health care institutions to provide better treatment. Having rules that are more easily understood, complied with, and enforced may provide a significant benefit to the general public, as will enabling health care facilities to provide better treatment.

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

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses affected by the rules may include small health care institutions and personnel members who are physicians, registered nurse practitioners, or registered nurses.

b. The administrative and other costs required for compliance with the rules

Anticipated costs for complying with the rules are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The methods that the Department may use to reduce the impact on small businesses are described in paragraph 3 and include the option to use telemedicine to ensure access to a physician or registered nurse practitioner for a behavioral health inpatient facility. The rules also allow for a behavioral health residential facility to devise its own methods to ensure adequate oversight of residents and adequate staffing, rather than having to comply with specific methods determined by the Department.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs to private persons and consumers from the rules changes are described in paragraph 3.

6. A statement of the probable effect on state revenues

The rulemaking includes the reinstatement of fees that expired under A.R.S. § 41-1008(E) on June 30, 2016. These fees are a 90/10 split between the health services licensing fund and the general fund, according to A.R.S. § 36-405(D). Based on the number of health care institutions that are currently authorized to provide the services for which fees are being reinstated and would begin paying the reinstated fees, the Department anticipates that the general fund may receive approximately $30,000 in additional revenue.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rules.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable

Gmail

Patricia Grant <patricia.grant@azdoa.gov>

Fwd: Additional question for DHS (D2) TITLE 9, CHAPTER 10, TITLE 1

1 message

Anakaren Lemus <anakaren.lemus@azdoa.gov> Mon, Jul 31, 2023 at 2:16 PM
To: Patricia Grant <patricia.grant@azdoa.gov>, Simon Larscheidt <simon.larscheidt@azdoa.gov>

FYI - DHS' response to Council Member Thorwald's questions.

Thanks.

Anakaren Lemus

Legislative Specialist | ADOA - Director's Office

100 North 15th Avenue, Suite 302, Phoenix, AZ 85007

Anakaren.Lemus@azdoa.gov | http://www.azdoa.gov

---------- Forwarded message ---------
From: **Emily Carey** <emily.carey@azdhs.gov>
Date: Mon, Jul 31, 2023 at 11:42 AM
Subject: Re: Additional question for DHS (D2) TITLE 9, CHAPTER 10, TITLE 1
To: Anakaren Lemus <anakaren.lemus@azdoa.gov>

Hi Anakaren,

Please see below ADHS response to Council Member Thorwald's inquiries on Chapter 10, Article 1-General.

Regarding the proposed five-year-review report for Title 9, Chapter 10 Health Care Institutions, Article 1, the Department of Health Services rules regarding medications referenced in R9-10-120 for Opioid Prescribing and Treatment are applicable to all articles, unless explicitly stated otherwise, and are an addition to the rules specified in each correlating Article. The Department has implemented rules for medication services in each Article of Chapter 10 that are specific to the type of facility, as specified in each Article. For example, 9 A.A.C. 10, Article 8 regarding Assisted Living Facilities, stipulates the medication services in R9-10-816 that each facility must comply with for policies and procedures relating to medication administration and storage. The Department will review our rules regarding medications, however, the Department believes the medication services component of each Article is adequate and sufficient for personnel and facilities to follow for proper drug management and appropriation of medications.

Concerning the topic of repurposing medication in accordance with A.R.S. § 32-1909, the Department intends to incorporate the requirements in A.R.S. § 32-1909 into our rules for each kind of health care institution type. The Department believes this reference should be included, for example in R9-10-816(F) on policies and procedures on tracking, dispensing, and storing medications. The rules in R9-10-816 are attached for your convenience. The Department appreciates Council Member Thorwald for bringing forward these questions. Please let us know if there are any more questions. Thank you.

Thank you,

Emily Carey, M.S.
Senior Rules Analyst, Administrative Counsel & Rules
Arizona Department of Health Services
150 N 18th Ave, Phoenix, AZ 85007
Direct - 602-542-5121
Email - emily.carey@azdhs.gov
Health and Wellness for all Arizonans

On Fri, Jul 28, 2023 at 7:28 AM Emily Carey <emily.carey@azdhs.gov> wrote:

> Thank you!
>
> **Emily Carey, M.S.**
> Senior Rules Analyst, Administrative Counsel & Rules
> Arizona Department of Health Services
> 150 N 18th Ave, Phoenix, AZ 85007
> Direct - 602-542-5121
> Email - emily.carey@azdhs.gov
> *Health and Wellness for all Arizonans*
>
> On Thu, Jul 27, 2023 at 8:52 AM Anakaren Lemus <anakaren.lemus@azdoa.gov> wrote:
>
> > Hi Emily -
> >
> > Please see the attached information sent me in regards to your questions.
> >
> > Thanks.
> >
> > **Anakaren Lemus**
> >
> > Paralegal Project Specialist | Governor's Regulatory Review Council
> >
> > Public Records Manager | ADOA - Director's Office
> >
> > 100 North 15th Avenue, Suite 302, Phoenix, AZ 85007
> > Office: 602.542.2058
> >
> > Anakaren.Lemus@azdoa.gov | http://www.azdoa.gov
> >
> > On Wed, Jul 26, 2023 at 12:24 PM Emily Carey <emily.carey@azdhs.gov> wrote:
> >
> > > Thank you very much!
> > >
> > > **Emily Carey, M.S.**
> > > Senior Rules Analyst, Administrative Counsel & Rules
> > > Arizona Department of Health Services
> > > 150 N 18th Ave, Phoenix, AZ 85007
> > > Direct - 602-542-5121
> > > Email - emily.carey@azdhs.gov
> > > *Health and Wellness for all Arizonans*
> > >
> > > On Wed, Jul 26, 2023 at 12:15 PM Anakaren Lemus <anakaren.lemus@azdoa.gov> wrote:
> > >
> > > > Yes - I have forwarded your questions to Council Member Thorwald.
> > > >
> > > > **Anakaren Lemus**
> > > >
> > > > Paralegal Project Specialist | Governor's Regulatory Review Council

Public Records Manager | ADOA - Director's Office

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Office: 602.542.2058

Anakaren.Lemus@azdoa.gov | http://www.azdoa.gov

On Wed, Jul 26, 2023 at 12:02 PM Emily Carey <emily.carey@azdhs.gov> wrote:

Would it be possible to ask Council Member Thorwald if he could provide us any clarification on what he means by "repurposed medication" and the specific board of pharmacy rules he is referring to?

Thank you,

Emily Carey, M.S.
Senior Rules Analyst, Administrative Counsel & Rules
Arizona Department of Health Services
150 N 18th Ave, Phoenix, AZ 85007
Direct - 602-542-5121
Email - emily.carey@azdhs.gov
Health and Wellness for all Arizonans

On Wed, Jul 26, 2023 at 11:24 AM Emily Carey <emily.carey@azdhs.gov> wrote:

Thank you Anakaren. We will provide a written response prior to next week's meeting!

Emily Carey, M.S.
Senior Rules Analyst, Administrative Counsel & Rules
Arizona Department of Health Services
150 N 18th Ave, Phoenix, AZ 85007
Direct - 602-542-5121
Email - emily.carey@azdhs.gov
Health and Wellness for all Arizonans

On Wed, Jul 26, 2023 at 10:23 AM Anakaren Lemus <anakaren.lemus@azdoa.gov> wrote:

Hi Emily -

Please see below additional questions from Council Member Thorwald regarding the 5YRR heard yesterday.

Thank you.

Anakaren Lemus

Paralegal Project Specialist | Governor's Regulatory Review Council

Public Records Manager | ADOA - Director's Office

100 North 15th Avenue, Suite 302, Phoenix, AZ 85007
Office: 602.542.2058

Anakaren.Lemus@azdoa.gov | http://www.azdoa.gov

---------- Forwarded message ---------

---------- Forwarded message ---------
From: **Frank Thorwald** <FrankThorwald@thorwaldgroup.com>
Date: Tue, Jul 25, 2023 at 8:12 PM

Subject: Additional question for DHS (D2) TITLE 9, CHAPTER 10, TITLE 1
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>
Cc: Frank Thorwald <FrankThorwald@thorwaldgroup.com>

Why are you not incorporating repurposed medication that unanimously approved by the legislature and rules established by the pharmacy board that may save the state millions?

Frank Thorwald
940-230-5840
Frank Thorwald@ThorwaldGroup.com

CONFIDENTIALITY NOTICE: This e-mail is the property of the Arizona Department of Health Services and contains information that may be PRIVILEGED, CONFIDENTIAL, or otherwise exempt from disclosure by applicable law. It is intended only for the person(s) to whom it is addressed. If you have received this communication in error, please do not retain or distribute it. Please notify the sender immediately by e-mail at the address shown above and delete the original message. Thank you.

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R9-10-816.pdf
750K

TITLE 9. HEALTH SERVICES
CHAPTER 10. DEPARTMENT OF HEALTH SERVICES – HEALTH CARE INSTITUTIONS: LICENSING

Authority: A.R.S. §§ 36-132(A)(1), 36-136(G)

ARTICLE 8. ASSISTED LIVING FACILITIES

Article 8 (Sections R9-10-801 through R9-10-812) adopted as permanent rules effective October 30, 1989.

Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective July 31, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.

Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective April 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.

Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.

New Article 8, consisting of Sections R9-10-801 through R9-10-812, adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Former Article 8, consisting of Sections R9-10-801 through R9-10-867, repealed effective October 20, 1982.

Section

ARTICLE 8. ASSISTED LIVING FACILITIES

R9-10-801. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article, unless the context otherwise requires:

1. "Accept" or "acceptance" means:
   a. An individual begins living in and receiving assisted living services from an assisted living facility; or
   b. An individual begins receiving adult day health care services or respite care services from an assisted living facility.
2. "Assistant caregiver" means an employee or volunteer who helps a manager or caregiver provide supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
3. "Assisted living services" means supervisory care services, personal care services, directed care services, behavioral care, or ancillary services provided to a resident by or on behalf of an assisted living facility.
4. "Caregiver" means an individual who provides supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
5. "Manager" means an individual designated by a governing authority to act on behalf of the governing authority in the onsite management of the assisted living facility.

6. "Medication organizer" means a container that is designed to hold doses of medication and is divided according to date or time increments.
7. "Primary care provider" means a physician, a physician's assistant, or registered nurse practitioner who directs a resident's medical services.
8. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
9. "Service plan" means a written description of a resident's need for supervisory care services, personal care services, directed care services, ancillary services, or behavioral health services and the specific assisted living services to be provided to the resident.
10. "Termination of residency" or "terminate residency" means a resident is no longer living in and receiving assisted living services from an assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-802. Supplemental Application Requirements; Exemption

A. In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as an assisted living facility shall include in a Department-provided format:
1. Which of the following levels of assisted living services the applicant is requesting authorization to provide:
   a. Supervisory care services,
   b. Personal care services, or
   c. Directed care services; and
2. Whether the applicant is requesting authorization to provide:
   a. Adult day health care services, or
   b. Behavioral health services other than behavioral care.

B. The Arizona Pioneers' Home is exempt from:
1. Architectural plans and specifications for a health care institution specified in R9-10-104; and
2. Physical plant codes and standards for a health care institution specified in R9-10-105(A)(5)(a).

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 28 A.A.R. 869 (April 29, 2022), with an immediate effective date of April 8, 2022 (Supp. 22-2).

R9-10-803. Administration

A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of an assisted living facility;
2. Establish, in writing, an assisted living facility's scope of services;
3. Designate, in writing, a manager who:
   a. Is 21 years of age or older; and
   b. Except for the manager of an adult foster care home, has either a:
      i. Certificate as an assisted living facility manager issued under A.R.S. § 36-446.04(C), or
      ii. A temporary certificate as an assisted living facility manager issued under A.R.S. § 36-446.06;
4. Adopt a quality management program that complies with R9-10-804;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting manager who has the qualifications established in subsection (A)(3), if the manager is:
   a. Expected not to be present on the assisted living facility's premises for more than 30 calendar days, or
   b. Not present on the assisted living facility's premises for more than 30 calendar days;

7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the manager and identify the name and qualifications of the new manager;
8. Ensure that a manager or caregiver who is able to read, write, understand, and communicate in English is on an assisted living facility's premises; and
9. Ensure compliance with A.R.S. § 36-411.

B. A manager:
1. Is directly accountable to the governing authority of an assisted living facility for the daily operation of the assisted living facility and all services provided by or at the assisted living facility;
2. Has the authority and responsibility to manage the assisted living facility; and
3. Except as provided in subsection (A)(6), designates, in writing, a caregiver who is:
   a. At least 21 years of age, and
   b. Present on the assisted living facility's premises and accountable for the assisted living facility when the manager is not present on the assisted living facility premises.

C. A manager shall ensure that policies and procedures are:
1. Established, documented, and implemented to protect the health and safety of a resident that:
   a. Cover job descriptions, duties, and qualifications, including required skills and knowledge, education, and experience for employees and volunteers;
   b. Cover orientation and in-service education for employees and volunteers;
   c. Include how an employee may submit a complaint related to resident care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Except as provided in subsection (M), cover cardiopulmonary resuscitation training for applicable employees and volunteers, including:
      i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the employee's or volunteer's ability to perform cardiopulmonary resuscitation;
      ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
      iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
      iv. The documentation that verifies that the employee or volunteer has received cardiopulmonary resuscitation training;
   f. Cover first aid training;
   g. Cover how a caregiver will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
   h. Cover staffing and recordkeeping;
   i. Cover resident acceptance and resident rights;
   j. Cover termination of residency, including:
      i. Termination initiated by the manager of an assisted living facility, and
      ii. Termination initiated by a resident or the resident's representative;
   k. Cover the provision of assisted living services, including:
      i. Coordinating the provision of assisted living services,
      ii. Making vaccination for influenza and pneumonia available to residents according to A.R.S. § 36-406(1)(d), and
      iii. Obtaining resident preferences for food and the provision of assisted living services;
   l. Cover the provision of respite services or adult day health services, if applicable;
   m. Cover methods by which the assisted living facility is aware of the general or specific whereabouts of a resident, based on the level of assisted living services provided to the resident and the assisted living services the assisted living facility is authorized to provide;
   n. Cover resident medical records, including electronic medical records;
   o. Cover personal funds accounts, if applicable;
   p. Cover specific steps for:
      i. A resident to file a complaint, and
      ii. The assisted living facility to respond to a resident's complaint;
   q. Cover health care directives;
   r. Cover assistance in the self-administration of medication, and medication administration;
   s. Cover food services;
   t. Cover contracted services;
   u. Cover equipment inspection and maintenance, if applicable;
   v. Cover infection control; and
   w. Cover a quality management program, including incident report and supporting documentation;
2. Available to employees and volunteers of the assisted living facility; and
3. Reviewed at least once every three years and updated as needed.

D. A manager shall ensure that the following are conspicuously posted:
1. A list of resident rights;
2. The assisted living facility's license;
3. Current phone numbers of:
   a. The unit in the Department responsible for licensing and monitoring the assisted living facility,

b. Adult Protective Services in the Department of Economic Security,
c. The State Long-Term Care Ombudsman, and
d. The Arizona Center for Disability Law; and

4. The location at which a copy of the most recent Department inspection report and any plan of correction resulting from the Department inspection may be viewed.

E. A manager shall ensure that, unless otherwise stated:

1. Documentation required by this Article is provided to the Department within two hours after a Department request; and
2. When documentation or information is required by this Chapter to be submitted on behalf of an assisted living facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the assisted living facility.

F. If a requirement in this Article states that a manager shall ensure an action or condition or sign a document:

1. A governing authority or licensee may ensure the action or condition or sign the document and retain the responsibility to ensure compliance with the requirement in this Article;
2. The manager may delegate ensuring the action or condition or signing the document to another individual, but the manager retains the responsibility to ensure compliance with the requirement in the Article; and
3. If the manager delegates ensuring an action or condition or signing a document, the delegation is documented and the documentation includes the name of the individual to whom the action, condition, or signing is delegated and the effective date of the delegation.

G. A manager shall:

1. Not act as a resident's representative and not allow an employee or a family member of an employee to act as a resident's representative for a resident who is not a family member of the employee;
2. If the assisted living facility administers personal funds accounts for residents and is authorized in writing by a resident or the resident's representative to administer a personal funds account for the resident:
   a. Ensure that the resident's personal funds account does not exceed $2,000;
   b. Maintain a separate record for each resident's personal funds account, including receipts and expenditures;
   c. Maintain the resident's personal funds account separate from any account of the assisted living facility; and
   d. Provide a copy of the record of the resident's personal funds account to the resident or the resident's representative at least once every three months;
3. Notify the resident's representative, family member, public fiduciary, or trust officer if the manager determines that a resident is incapable of handling financial affairs; and
4. Except when a resident's need for assisted living services changes, as documented in the resident's service plan, ensure that a resident receives at least 30 calendar days written notice before any increase in a fee or charge.

H. A manager shall permit the Department to interview an employee, a volunteer, or a resident as part of a compliance survey or a complaint investigation.

I. If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not on the premises and not receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.

J. If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect or exploitation has occurred on the premises or while a resident is receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager 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 according to A.R.S. § 46-454;
3. Document:
   a. The suspected abuse, neglect, or exploitation;
   b. Any action taken according to subsection (J)(1); and
   c. The report in subsection (J)(2);
4. Maintain the documentation in subsection (J)(3) for at least 12 months after the date of the report in subsection(J)(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 (J)(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 manager 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 (J)(5) for at least 12 months after the date the investigation was initiated.

K. A manager 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 services provider.

L. If a resident is receiving services from a home health agency or hospice service agency, a manager shall ensure that:

1. The resident's medical record contains:

a. The name, address, and contact individual, including contact information, of the home health agency or hospice service agency;
b. Any information provided by the home health agency or hospice service agency; and
c. A copy of resident follow-up instructions provided to the resident by the home health agency or hospice service agency; and

2. Any care instructions for a resident provided to the assisted living facility by the home health agency or hospice service agency are:
a. Within the assisted living facility's scope of services,
b. Communicated to a caregiver, and
c. Documented in the resident's service plan.

M. A manager of an assisted living home may establish, in policies and procedures, requirements that a caregiver obtains and provides documentation of cardiopulmonary resuscitation training specific to adults, which includes a demonstration of the caregiver's ability to perform cardiopulmonary resuscitation, from one of the following organizations:
1. American Red Cross,
2. American Heart Association, or
3. National Safety Council.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-803 renumbered to R9-10-804; new Section R9-10-803 made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-804. Quality Management

A manager 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.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-804 renumbered from R9-10-803 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-805. Contracted Services

A manager 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.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency and (A)(1)(a)(i)(1) amended effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid

for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-806. Personnel

A. A manager shall ensure that:

1. A caregiver:
   a. Is 18 years of age or older; and
   b. Provides documentation of:
      i. Completion of a caregiver training program approved by the Department or the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers;
      ii. For supervisory care services, employment as a manager or caregiver of a supervisory care home before November 1, 1998;
      iii. For supervisory care services or personal care services, employment as a manager or caregiver of a supportive residential living center before November 1, 1998; or
      iv. For supervisory care services, personal care services, or directed services, one of the following:
         (1) A nursing care institution administrator's license issued by the Board of Examiners;
         (2) A nurse's license issued to the individual under A.R.S. Title 32, Chapter 15;
         (3) Documentation of employment as a manager or caregiver of an unclassified residential care institution before November 1, 1998; or
         (4) Documentation of sponsorship of or employment as a caregiver in an adult foster care home before November 1, 1998;
2. An assistant caregiver:
   a. Is 16 years of age or older, and
   b. Interacts with residents under the supervision of a manager or caregiver;
3. The qualifications, skills, and knowledge required for a caregiver or assistant caregiver:
   a. Are based on:
      i. The type of assisted living services, behavioral health services, or behavioral care expected to be provided by the caregiver or assistant caregiver according to the established job description; and
      ii. The acuity of the residents receiving assisted living services, behavioral health services, or behavioral care from the caregiver or assistant caregiver according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description;
      ii. The type and duration of education that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description; and
      iii. The type and duration of experience that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services or behavioral care listed in the established job description;
4. A caregiver's or assistant caregiver's skills and knowledge are verified and documented:
   a. Before the caregiver or assistant caregiver provides physical health services or behavioral health services, and
   b. According to policies and procedures;
5. An assisted living facility has a manager, caregivers, and assistant caregivers with the qualifications, experience, skills, and knowledge necessary to:
   a. Provide the assisted living services, behavioral health services, behavioral care, and ancillary services in the assisted living facility's scope of services;
   b. Meet the needs of a resident; and
   c. Ensure the health and safety of a resident;
6. At least one manager or caregiver is present and awake at an assisted living center when a resident is on the premises;
7. Documentation is maintained for at least 12 months after the last date on the documentation of the caregivers and assistant caregivers working each day, including the hours worked by each;
8. A manager, a caregiver, and an assistant caregiver, or an employee or a volunteer who has or is expected to have more than eight hours per week of direct interaction with residents, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the assisted living facility, and
   b. As specified in R9-10-113;
9. Before providing assisted living services to a resident, a caregiver or an assistant caregiver receives orientation that is specific to the duties to be performed by the caregiver or assistant caregiver; and

10. Before providing assisted living services to a resident, a manager or caregiver provides current documentation of first aid training and cardiopulmonary resuscitation training certification specific to adults.

B. A manager of an assisted living home shall ensure that:

1. An individual residing in an assisted living home, who is not a resident, a manager, a caregiver, or an assistant caregiver:
   a. Either:
      i. Complies with the fingerprinting requirements in A.R.S. § 36-411, or
      ii. Interacts with residents only under the supervision of an individual who has a valid fingerprint clearance card; and
   b. If the individual is 12 years of age or older, provides evidence of freedom from infectious tuberculosis as specified in R9-10-113;
2. Documentation of compliance with the requirements in subsection (B)(1)(a) and evidence of freedom from infectious tuberculosis, if required under subsection (B)(1)(b), is maintained for an individual residing in the assisted living home who is not a resident, a manager, a caregiver, or an assistant caregiver;
3. As part of the policies and procedures required in R9-10-803(C)(1)(h), a plan is established, documented, and implemented to ensure that the manager or a caregiver is available as back-up to provide assisted living services to a resident if the manager or a caregiver assigned to work is not available or not able to provide the required assisted living services; and
4. At least the manager or a caregiver is present at an assisted living home when a resident is present in the assisted living home and:
   a. Except for nighttime hours, the manager or caregiver is awake; and
   b. If the manager or caregiver is not awake during nighttime hours:
      i. The manager or caregiver can hear and respond to a resident needing assistance; and
      ii. If the assisted living home is authorized to provide directed care services, policies and procedures are developed, documented, and implemented to establish a process for checking on a resident receiving directed care services during nighttime hours to ensure the resident's health and safety.

C. A manager shall ensure that a personnel record for each employee or volunteer:

1. Includes:
   a. The individual's name, date of birth, and contact telephone number;
   b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
   c. Documentation of:
      i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
      ii. The individual's education and experience applicable to the individual's job duties;
      iii. The individual's completed orientation and in-service education required by policies and procedures;
      iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or in policies and procedures;
      v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
      vi. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(8);
      vii. Cardiopulmonary resuscitation training, if required for the individual in this Article or policies and procedures;
      viii First aid training, if required for the individual in this Article or policies and procedures; and
      ix. Documentation of compliance with the requirements in A.R.S. § 36-411(A) and (C);
2. Is maintained:
   a. Throughout the individual's period of providing services in or for the assisted living facility, and
   b. For at least 24 months after the last date the individual provided services in or for the assisted living facility; and
3. For a manager, a caregiver, or an assistant caregiver who has not provided physical health services or behavioral health services at or for the assisted living facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-807. Residency and Residency Agreements

A. Except as provided in R9-10-808(B)(2), a manager shall ensure that a resident provides evidence of freedom from infectious tuberculosis:

1. Before or within seven calendar days after the resident's date of occupancy, and
2. As specified in R9-10-113.

B. A manager shall ensure that before or at the time of acceptance of an individual, the individual submits documentation that is dated within 90 calendar days before the individual is accepted by an assisted living facility and:

1. If an individual is requesting or is expected to receive supervisory care services, personal care services, or directed care services:
   a. Includes whether the individual requires:
      i. Continuous medical services,
      ii. Continuous or intermittent nursing services, or
      iii. Restraints; and
   b. Is dated and signed by a:
      i. Physician,
      ii. Registered nurse practitioner,
      iii. Registered nurse, or
      iv. Physician assistant; and
2. If an individual is requesting or is expected to receive behavioral health services, other than behavioral care, in addition to supervisory care services, personal care services, or directed care services from an assisted living facility:
   a. Includes whether the individual requires continuous behavioral health services, and
   b. Is signed and dated by a behavioral health professional.

C. A manager shall not accept or retain an individual if:
1. The individual requires continuous:
   a. Medical services;
   b. Nursing services, unless the assisted living facility complies with A.R.S. § 36-401(C); or
   c. Behavioral health services;
2. The primary condition for which the individual needs assisted living services is a behavioral health issue;
3. The services needed by the individual are not within the assisted living facility's scope of services and a home health agency or hospice service agency is not involved in the care of the individual;
4. The assisted living facility does not have the ability to provide the assisted living services needed by the individual; or
5. The individual requires restraints, including the use of bedrails.

D. Before or at the time of an individual's acceptance by an assisted living facility, a manager shall ensure that there is a documented residency agreement with the assisted living facility that includes:
1. The individual's name;
2. Terms of occupancy, including:
   a. Date of occupancy or expected date of occupancy,
   b. Resident responsibilities, and
   c. Responsibilities of the assisted living facility;
3. A list of the services to be provided by the assisted living facility to the resident;
4. A list of the services available from the assisted living facility at an additional fee or charge;
5. For an assisted living home, whether the manager or a caregiver is awake during nighttime hours;
6. The policy for refunding fees, charges, or deposits;
7. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the resident's service plan;
8. The policy and procedure for an assisted living facility to terminate residency;
9. The complaint process; and
10. The manager's signature and date signed.

E. Before or within five working days after a resident's acceptance by an assisted living facility, a manager shall obtain on the documented agreement, required in subsection (D), the signature of one of the following individuals:
1. The resident,
2. The resident's representative,
3. The resident's legal guardian, or
4. Another individual who has been designated by the individual under A.R.S. § 36-3221 to make health care decisions on the individual's behalf.

F. A manager shall:
1. Before or at the time of an individual's acceptance by an assisted living facility, provide to the resident or resident's representative a copy of:
   a. The residency agreement in subsection (D),
   b. Resident's rights, and
   c. The policy and procedure on health care directives; and
2. Maintain the original of the residency agreement in subsection (D) in the resident's medical record.

G. A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in an assisted living facility;
2. With a 14-calendar-day written notice of termination of residency:
   a. For nonpayment of fees, charges, or deposit; or
   b. Under any of the conditions in subsection (C); or
3. With a 30-calendar-day written notice of termination of residency, for any other reason.

H. A manager shall ensure that the written notice of termination of residency in subsection (G) includes:

1. The date of notice;
2. The reason for termination;
3. The policy for refunding fees, charges, or deposits;
4. The deposition of a resident's fees, charges, and deposits; and
5. Contact information for the State Long-Term Care Ombudsman.

I. A manager shall provide the following to a resident when the manager provides the written notice of termination of residency in subsection (G):
1. A copy of the resident's current service plan, and
2. Documentation of the resident's freedom from infectious tuberculosis.

J. If an assisted living facility issues a written notice of termination of residency as provided in subsection (G) to a resident or the resident's representative because the resident needs services the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide, a manager shall ensure that the written notice of termination of residency includes a description of the specific services that the resident needs that the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide.

Historical Note

Adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-808. Service Plans

A. Except as required in subsection (B), a manager shall ensure that a resident has a written service plan that:
1. Is completed no later than 14 calendar days after the resident's date of acceptance;
2. Is developed with assistance and review from:
   a. The resident or resident's representative,
   b. The manager, and
   c. Any individual requested by the resident or the resident's representative;
3. Includes the following:
   a. A description of the resident's medical or health problems, including physical, behavioral, cognitive, or functional conditions or impairments;
   b. The level of service the resident is expected to receive;
   c. The amount, type, and frequency of assisted living services being provided to the resident, including medication administration or assistance in the self-administration of medication;
   d. For a resident who requires intermittent nursing services or medication administration, review by a nurse or medical practitioner;
   e. For a resident who requires behavioral care:
      i. Any of the following that is necessary to provide assistance with the resident's psychosocial interactions to manage the resident's behavior:
         (1) The psychosocial interactions or behaviors for which the resident requires assistance,
         (2) Psychotropic medications ordered for the resident,
         (3) Planned strategies and actions for changing the resident's psychosocial interactions or behaviors, and
         (4) Goals for changes in the resident's psychosocial interactions or behaviors; and
      ii. Review by a medical practitioner or behavioral health professional; and
   f. For a resident who will be storing medication in the resident's bedroom or residential unit, how the medication will be stored and controlled;
4. Is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f):
   a. No later than 14 calendar days after a significant change in the resident's physical, cognitive, or functional condition; and
   b. As follows:
      i. At least once every 12 months for a resident receiving supervisory care services,
      ii. At least once every six months for a resident receiving personal care services, and
      iii. At least once every three months for a resident receiving directed care services; and
5. When initially developed and when updated, is signed and dated by:
   a. The resident or resident's representative;
   b. The manager;
   c. If a review is required in subsection (A)(3)(d), the nurse or medical practitioner who reviewed the service plan; and

d. If a review is required in subsection (A)(3)(e)(ii), the medical practitioner or behavioral health professional who reviewed the service plan.

B. For a resident receiving respite care services, a manager shall ensure that:
1. A written service plan is:
   a. Based on a determination of the resident's current needs and:
      i. Is completed no later than three working days after the resident's date of acceptance; or
      ii. If the resident has a service plan in the resident's medical record that was developed within the previous 12 months, is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the resident's date of acceptance; and
   b. If a significant change in the resident's physical, cognitive, or functional condition occurs while the resident is receiving respite care services, updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the significant change occurs; and
2. If the resident is not expected to be present in the assisted living facility for more than seven calendar days, the resident is not required to comply with the requirements in R9-10-807(A).

C. A manager shall ensure that:
1. A caregiver or an assistant caregiver:
   a. Provides a resident with the assisted living services in the resident's service plan;
   b. Is only assigned to provide the assisted living services the caregiver or assistant caregiver has the documented skills and knowledge to perform;
   c. Provides assistance with activities of daily living according to the resident's service plan;
   d. If applicable, suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living;
   e. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's service plan;
   f. Encourages a resident to participate in activities planned according to subsection (E); and
   g. Documents the services provided in the resident's medical record; and
2. A volunteer or an assistant caregiver who is 16 or 17 years of age does not provide:
   a. Assistance to a resident for:
      i. Bathing,
      ii. Toileting, or
      iii. Moving the resident's body from one surface to another surface;
   b. Assistance in the self-administration of medication;
   c. Medication administration; or
   d. Nursing services.

D. A manager of an assisted living facility that is authorized to provide adult day health services shall ensure that the adult day health care services are provided as specified in R9-10-1113.

E. A manager shall ensure that:
1. Daily social, recreational, or rehabilitative activities are planned according to residents' preferences, needs, and abilities;
2. A calendar of planned activities is:
   a. Prepared at least one week in advance of the date the activity is provided,
   b. Posted in a location that is easily seen by residents,
   c. Updated as necessary to reflect substitutions in the activities provided, and
   d. Maintained for at least 12 months after the last scheduled activity;
3. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity; and
4. Multiple media sources, such as daily newspapers, current magazines, internet sources, and a variety of reading materials, are available and accessible to a resident to maintain the resident's continued awareness of current news, social events, and other noteworthy information.

F. If a resident is not receiving assistance with the resident's psychosocial interactions under the direction of a behavioral health professional or any other behavioral health services at an assisted living facility, the resident is not considered to be receiving behavioral care or behavioral health services from the assisted living facility if the resident:
1. Is prescribed a psychotropic medication, or
2. Is receiving directed care services and has a primary diagnosis of:
   a. Dementia,
   b. Alzheimer's disease-related dementia, or
   c. Traumatic brain injury.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective

October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-809. Transport; Transfer

A. Except as provided in subsection (B), a manager shall ensure that:
1. A caregiver or employee 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, and
   b. Information from the resident's medical record is provided to a receiving health care institution; and
3. Documentation includes:
   a. If applicable, any communication with an individual at a receiving health care institution;
   b. The date and time of the transport; and
   c. If applicable, the name of the caregiver 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.

C. Except for a transfer of a resident due to an emergency, a manager shall ensure that:
1. A caregiver 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 caregiver 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 caregiver accompanying the resident during a transfer.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-809 renumbered to R9-10-812; new Section R9-10-809 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). R9-10-809(E) reflects a corrected reference to Article 14 from Article 4 (05-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-810. Resident Rights

A. A manager shall ensure that, at the time of acceptance, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C).

B. A manager shall ensure that:
1. A resident is treated with dignity, respect, and consideration;
2. 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 the assisted living facility's manager, caregivers, assistant caregivers, employees, or volunteers; and

3. A resident or the resident's representative:
   a. Is informed of the following:
      i. The policy on health care directives, and
      ii. The resident complaint process;
   b. Consents to photographs of the resident before the resident is photographed, except that a resident may be photographed when accepted as a resident by an assisted living facility for identification and administrative purposes;
   c. Except as otherwise permitted by law, provides written consent before the release of information in the resident's:
      i. Medical record, or
      ii. Financial records;
   d. May:
      i. Request or consent to relocation within the assisted living facility; and
      ii. Except when relocation is necessary based on a change in the resident's condition as documented in the resident's service plan, refuse relocation within the assisted living facility;
   e. Has access to the resident's records during normal business hours or at a time agreed upon by the resident or resident's representative and the manager; and
   f. Is informed of:
      i. The rates and charges for services before the services are initiated;
      ii. A change in rates or charges at least 30 calendar days before the change is implemented, unless the change in rates or charges results from a change in services; and
      iii. A change in services at least 30 calendar days before the change is implemented, unless the resident's service plan changes.

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 assisted living services that support and respect the resident's individuality, choices, strengths, and abilities;
3. To receive privacy in:
   a. Care for personal needs;
   b. Correspondence, communications, and visitation; and
   c. Financial and personal affairs;
4. To maintain, use, and display personal items unless the personal items constitute a hazard;
5. To choose to participate or refuse to participate in social, recreational, rehabilitative, religious, political, or community activities;
6. To review, upon written request, the resident's own medical record;
7. To receive a referral to another health care institution if the assisted living facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
8. To choose to access services from a health care provider, health care institution, or pharmacy other than the assisted living facility where the resident is residing and receiving services or a health care provider, health care institution, or pharmacy recommended by the assisted living facility;
9. To participate or have the resident's representative participate in the development of, or decisions concerning, the resident's service plan; 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.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-810 renumbered to R9-10-813; new Section R9-10-810 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-811. Medical Records

A. A manager 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. Only recorded 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. 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;
4. A resident's medical record is available to an individual:
   a. Authorized according to policies and procedures to access the resident's medical record;
   b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
   c. As permitted by law; and
5. A resident's medical record is protected from loss, damage, or unauthorized use.

B. If an assisted living facility maintains residents' medical records electronically, a manager 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. A manager shall ensure that a resident's medical record contains:
1. Resident information that includes:
   a. The resident's name, and
   b. The resident's date of birth;
2. The names, addresses, and telephone numbers of:
   a. The resident's primary care provider;
   b. Other persons, such as a home health agency or hospice service agency, involved in the care of the resident; and
   c. An individual to be contacted in the event of emergency, significant change in the resident's condition, or termination of residency;
3. 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;
4. The date of acceptance and, if applicable, date of termination of residency;
5. Documentation of the resident's needs required in R9-10-807(B);
6. Documentation of general consent and informed consent, if applicable;
7. Except as allowed in R9-10-808(B)(2), documentation of freedom from infectious tuberculosis as required in R9-10-807(A);
8. A copy of resident's health care directive, if applicable;
9. The resident's signed residency agreement and any amendments;
10. Resident's service plan and updates;
11. Documentation of assisted living services provided to the resident;
12. A medication order from a medical practitioner for each medication that is administered to the resident or for which the resident receives assistance in the self-administration of the medication;
13. Documentation of medication administered to the resident or for which the resident received assistance in the self-administration of medication that includes:
   a. The date and time of administration or assistance;
   b. The name, strength, dosage, and route of administration;
   c. The name and signature of the individual administering or providing assistance in the self-administration of medication; and
   d. An unexpected reaction the resident has to the medication;
14. Documentation of the resident's refusal of a medication, if applicable;
15. 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;
16. If applicable, documentation of a determination by a medical practitioner that evacuation from the assisted living facility during an evacuation drill would cause harm to the resident;
17. Documentation of notification of the resident of the availability of vaccination for influenza and pneumonia, according to A.R.S. § 36-406(1)(d);
18. Documentation of the resident's orientation to exits from the assisted living facility required in R9-10-818(B);
19. If a resident is receiving behavioral health services other than behavioral care, documentation of the determination in R9-10-813(3);
20. If a resident is receiving behavioral care, documentation of the determination in R9-10-812(3);
21. If applicable, for a resident who is unable to direct self-care, the information required in R9-10-815(F);
22. Documentation of any significant change in a resident's behavior, physical, cognitive, or functional condition and the action taken by a manager or caregiver to address the resident's changing needs;
23. Documentation of the notification required in R9-10-803(G) if the resident is incapable of handling financial affairs; and
24. If the resident no longer resides and receives assisted living services from the assisted living facility:
   a. A written notice of termination of residency; or
   b. If the resident terminated residency, the date the resident terminated residency.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency

expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-811 renumbered to R9-10-814; new Section R9-10-811 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-812. Behavioral Care

A manager shall ensure that for a resident who requests or receives behavioral care from the assisted living facility, a behavioral health professional or medical practitioner:

1. Evaluates the resident:
   a. Within 30 calendar days before acceptance of the resident or before the resident begins receiving behavioral care, and
   b. At least once every six months throughout the duration of the resident's need for behavioral care;
2. Reviews the assisted living facility's scope of services; and
3. Signs and dates a determination stating that the resident's need for behavioral care can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989 (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989 (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-812 renumbered from R9-10-809 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-813. Behavioral Health Services

If an assisted living facility is authorized to provide behavioral health services other than behavioral care, a manager shall ensure that:

1. Policies and procedures are established, documented, and implemented that cover when general consent and informed consent are required and by whom general consent and informed consent may be given;
2. The behavioral health services:
   a. Are provided under the direction of a behavioral health professional; and
   b. Comply 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
3. For a resident who requests or receives behavioral health services from the assisted living facility, a behavioral health professional:
   a. Evaluates the resident within 30 calendar days before acceptance of the resident and at least once every six months throughout the duration of the resident's need for behavioral health services;
   b. Reviews the assisted living facility's scope of services; and
   c. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

Historical Note

New Section renumbered from R9-10-810 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-814. Personal Care Services

A. A manager of an assisted living facility authorized to provide personal care services shall not accept or retain a resident who:

1. Is unable to direct self-care;
2. Except as specified in subsection (B), is confined to a bed or chair because of an inability to ambulate even with assistance; or
3. Except as specified in subsection (C), has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.

B. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who is confined to a bed or chair because of an inability to ambulate even with assistance if:

1. The condition is a result of a short-term illness or injury; or
2. The following requirements are met at the onset of the condition or when the resident is accepted by the assisted living facility:
   a. The resident or resident's representative requests that the resident be accepted by or remain in the assisted living facility;
   b. The resident's primary care provider or other medical practitioner:

i. Examines the resident at the onset of the condition, or within 30 calendar days before acceptance, and at least once every six months throughout the duration of the resident's condition;
ii. Reviews the assisted living facility's scope of services; and
iii. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility; and

c. The resident's service plan includes the resident's increased need for personal care services.

C. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner, if the requirements in subsection (B)(2) are met.

D. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who:
1. Is receiving nursing services from a home health agency or a hospice service agency; or
2. Requires intermittent nursing services if:
   a. The resident's condition for which nursing services are required is a result of a short-term illness or injury, and
   b. The requirements of subsection (B)(2) are met.

E. A manager shall ensure that a bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available and accessible in a bedroom or residential unit being used by a resident receiving personal care services.

F. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving personal care services includes:
1. Skin maintenance to prevent and treat bruises, injuries, pressure sores, and infections;
2. Offering sufficient fluids to maintain hydration;
3. Incontinence care that ensures that a resident maintains the highest practicable level of independence when toileting; and
4. If applicable, the determination in subsection (B)(2)(b)(iii).

G. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving personal care services unless the resident has an order from the resident's primary care provider or another medical practitioner for the non-prescription medication.

Historical Note

New Section renumbered from R9-10-811 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-815. Directed Care Services

A. A manager shall ensure that a resident's representative is designated for a resident who is unable to direct self-care.

B. A manager of an assisted living facility authorized to provide directed care services shall not accept or retain a resident who, except as provided in R9-10-814(B)(2):
1. Is confined to a bed or chair because of an inability to ambulate even with assistance; or
2. Has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.

C. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving directed care services includes:
1. The requirements in R9-10-814(F)(1) through (3);
2. If applicable, the determination in R9-10-814(B)(2)(b)(iii);
3. Cognitive stimulation and activities to maximize functioning;
4. Strategies to ensure a resident's personal safety;
5. Encouragement to eat meals and snacks;
6. Documentation:
   a. Of the resident's weight, or
   b. From a medical practitioner stating that weighing the resident is contraindicated; and
7. Coordination of communications with the resident's representative, family members, and, if applicable, other individuals identified in the resident's service plan.

D. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving directed care services unless the resident has an order from a medical practitioner for the non-prescription medication.

E. A manager shall ensure that:
1. A bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available in a bedroom being used by a resident receiving directed care services; or
2. An assisted living facility has implemented another means to alert a caregiver or assistant caregiver to a resident's needs or emergencies.

F. A manager of an assisted living facility authorized to provide directed care services shall ensure that:
1. Policies and procedures are established, documented, and implemented that ensure the safety of a resident who may wander;
2. There is a means of exiting the facility for a resident who does not have a key, special knowledge for egress, or the ability to expend increased physical effort that meets one of the following:
   a. Provides access to an outside area that:

i. Allows the resident to be at least 30 feet away from the facility, and
ii. Controls or alerts employees of the egress of a resident from the facility;
b. Provides access to an outside area:
i. From which a resident may exit to a location at least 30 feet away from the facility, and
ii. Controls or alerts employees of the egress of a resident from the facility; or
c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the International Building Code incorporated by reference in R9-10-104.01; and
3. A caregiver or an assistant caregiver complies with the requirements for incidents in R9-10-804 when a resident who is unable to direct self-care wanders into an area not designated by the governing authority for use by the resident.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-816. Medication Services

A. A manager shall ensure that:
1. Policies and procedures for medication services include:
a. Procedures for preventing, responding to, and reporting a medication error;
b. Procedures for responding to and reporting an unexpected reaction to a medication;
c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
d. Procedures for:
i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
ii. Monitoring a resident who self-administers medication;
e. Procedures for assisting a resident in procuring medication; and
f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. If a verbal order for a resident's medication is received from a medical practitioner by the assisted living facility:
a. The manager or a caregiver takes the verbal order from the medical practitioner,
b. The verbal order is documented in the resident's medical record, and
c. A written order verifying the verbal order is obtained from the medical practitioner within 14 calendar days after receiving the verbal order.

B. If an assisted living facility provides medication administration, a manager shall ensure that:
1. Medication is stored by the assisted living facility;
2. Policies and procedures for medication administration:
a. Are reviewed and approved by a medical practitioner, registered nurse, or pharmacist;
b. Include a process for documenting an individual, authorized, according to the definition of "administer" in A.R.S. § 32-1901, by a medical practitioner to administer medication under the direction of the medical practitioner;
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; and
3. A medication administered to a resident:
a. Is administered by an individual under direction of a medical practitioner,
b. Is administered in compliance with a medication order, and
c. Is documented in the resident's medical record.

C. If an assisted living facility provides assistance in the self-administration of medication, a manager shall ensure that:
1. A resident's medication is stored by the assisted living facility;
2. The following assistance is provided to a resident:
a. A reminder when it is time to take the medication;
b. Opening the medication container or medication organizer for the resident;
c. Observing the resident while the resident removes the medication from the container or medication organizer;
d. Except when a resident uses a medication organizer, verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
i. The resident taking the medication is the individual stated on the medication container label,
ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label;
e. For a resident using a medication organizer, verifying that the resident is taking the medication in the medication organizer according to the schedule specified on the medical practitioner's order; or

f. Observing the resident while the resident takes the medication;

3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse; and
4. Assistance in the self-administration of medication provided to a resident:
   a. Is in compliance with an order, and
   b. Is documented in the resident's medical record.

D. A manager shall ensure that:
1. A current drug reference guide is available for use by personnel members, and
2. A current toxicology reference guide is available for use by personnel members.

E. A manager shall ensure that a resident's medication organizer is only filled by:
1. The resident;
2. The resident's representative;
3. A family member of the resident;
4. A personnel member of a home health agency or hospice service agency; or
5. The manager or a caregiver who has been designated and is under the direction of a medical practitioner, according to subsection (B)(2)(b).

F. When medication is stored by an assisted living facility, a manager shall ensure that:
1. Medication is stored in a separate locked room, closet, cabinet, 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 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.

G. A manager shall ensure that a caregiver immediately reports a medication error or a resident's unexpected reaction to a medication to the medical practitioner who ordered the medication or, if the medical practitioner who ordered the medication is not available, another medical practitioner.

H. If medication is stored by a resident in the resident's bedroom or residential unit, a manager shall ensure that:
1. The medication is stored according to the resident's service plan; or
2. If the medication is not being stored according to the resident's service plan, the resident's service plan is updated to include how the medication is being stored by the resident.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

R9-10-817. Food Services

A. A manager shall ensure that:
1. A food menu:
   a. Is prepared at least one week in advance,
   b. Includes the foods to be served each day,
   c. Is conspicuously posted at least one calendar day before the first meal on the food menu is 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;
2. Meals and snacks provided by the assisted living facility are served according to posted menus;
3. If the assisted living facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the assisted living facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the assisted living facility;
4. The assisted living facility is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
5. Meals and snacks for each day are planned using the applicable guidelines in http://www.health.gov/dietaryguidelines/2015;
6. A resident is provided a diet that meets the resident's nutritional needs as specified in the resident's service plan;
7. Water is available and accessible to residents at all times, unless otherwise stated in a medical practitioner's order; and
8. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the provision of adaptive eating equipment or utensils, such as a plate guard, rocking fork, or assistive hand device, if not provided by the resident.

B. If the assisted living facility offers therapeutic diets, a manager shall ensure that:
1. A current therapeutic diet manual is available for use by employees, and
2. The therapeutic diet is provided to a resident according to a written order from the resident's primary care provider or another medical practitioner.

C. A manager shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
2. Food is protected from potential contamination;
3. 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;
4. Potentially hazardous food is maintained as follows:
   a. Foods requiring refrigeration are maintained at 41° F or below; and
   b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155 °F;
      v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      vi. Leftovers are reheated to a temperature of at least 165° F;
5. A refrigerator used by an assisted living facility to store food or medication contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
6. Frozen foods are stored at a temperature of 0° F or below; and
7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

D. A manager of an assisted living center shall ensure that:
1. The assisted living center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
2. A copy of the assisted living center's food establishment license or permit is maintained.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

R9-10-818. Emergency and Safety Standards

A. A manager shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to caregivers and assistant caregivers, and, if necessary, implemented that includes:
   a. When, how, and where residents will be relocated;
   b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
   c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
   d. A plan for obtaining food and water for individuals present in the assisted living facility or the assisted living facility'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 the disaster plan review required in subsection (A)(2) includes:
   a. The date and time of the disaster plan review;
   b. The name of each 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 assisted living facility would cause harm to the resident, and
      ii. Sufficient caregivers 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 evacuation drill, and includes:
   a. The date and time of the evacuation drill;
   b. The amount of time taken for employees and residents to evacuate the assisted living facility;
   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 in each hallway of each floor of the assisted living facility.

B. A manager shall ensure that:
1. A resident receives orientation to the exits from the assisted living facility and the route to be used when evacuating the assisted living facility within 24 hours after the resident's acceptance by the assisted living facility, and
2. The resident's orientation is documented.

C. A manager shall ensure that a first-aid kit is maintained in the assisted living facility in a location accessible to caregivers and assistant caregivers.

D. When a resident has an accident, emergency, or injury that results in the resident needing medical services, a manager shall ensure that a caregiver or an assistant caregiver:
1. Immediately notifies the resident's emergency contact and primary care provider; and
2. Documents the following:
   a. The date and time of the accident, emergency, or injury;
   b. A description of the accident, emergency, or injury;
   c. The names of individuals who observed the accident, emergency, or injury;
   d. The actions taken by the caregiver or assistant caregiver;
   e. The individuals notified by the caregiver or assistant caregiver; and
   f. Any action taken to prevent the accident, emergency, or injury from occurring in the future.

E. A manager of an assisted living center shall ensure that:
1. Unless the assisted living center has documentation of having received an exception from the Department before October 1, 2013, in the areas of the assisted living center providing personal care services or directed care services:
   a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, and is in working order; and
   b. A sprinkler system is installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, and is in working order;
2. For the areas of the assisted living center providing only supervisory care services:
   a. A fire alarm system and a sprinkler system meeting the requirements in subsection (E)(1) are installed and in working order, or
   b. The assisted living center complies with the requirements in subsection (F);
3. A fire inspection is conducted by a local fire department or the State Fire Marshal before licensing and according to the time-frame established by the local fire department or the State Fire Marshal;
4. Any repairs or corrections stated on the fire inspection report are made; and
5. Documentation of a current fire inspection is maintained.

F. A manager of an assisted living home shall ensure that:
1. A fire extinguisher that is labeled as rated at least 2A-10-BC by the Underwriters Laboratories is mounted and maintained in the assisted living home;
2. A disposable fire extinguisher is replaced when its indicator reaches the red zone;
3. A rechargeable fire extinguisher:
   a. Is serviced at least once every 12 months, and
   b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
4. Except as provided in subsection (G):
   a. A smoke detector is:
      i. Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
      ii. Either battery operated or, if hard-wired into the electrical system of the assisted living home, has a back-up battery;
      iii. In working order; and
      iv. Tested at least once a month; and
   b. Documentation of the test required in subsection (F)(4)(a)(iv) is maintained for at least 12 months after the date of the test;
5. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the assisted living home; and
6. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the assisted living home.

G. A manager of an assisted living home may use a fire alarm system and a sprinkler system to ensure the safety of residents if the fire alarm system and sprinkler system:
1. Are installed and in working order, and
2. Meet the requirements in subsection (E)(1).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

R9-10-819. Environmental Standards

A. A manager shall ensure that:
1. The premises and equipment used at the assisted living facility are:
   a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
   b. Free from a condition or situation that may cause a resident or other 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. Garbage and refuse are:
   a. Stored in covered containers lined with plastic bags, and
   b. Removed from the premises at least once a week;
4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
5. Common areas:
   a. Are lighted to ensure the safety of residents, and
   b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
6. Hot water temperatures are maintained between 95º F and 120º F in areas of an assisted living facility used by residents;
7. 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;
8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
10. Oxygen containers are secured in an upright position;
11. Poisonous or toxic materials stored by the assisted living facility 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 and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
13. Equipment used at the assisted living facility 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;
14. If pets or animals are allowed in the assisted living facility, 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;
15. 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
16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.

B. If a swimming pool is located on the premises, a manager shall ensure that:
1. On a day that a resident uses the swimming pool, an employee:
   a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
      i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
      ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
      iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
   b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).

R9-10-820. Physical Plant Standards

A. A manager shall ensure that an assisted living center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in R9-10-104.01, that:

1. Are applicable to the level of services planned to be provided or being provided; and
2. Were in effect on the date the assisted living facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.

B. A manager shall ensure that:
1. The premises and equipment are sufficient to accommodate:
   a. The services stated in the assisted living facility's scope of services, and
   b. An individual accepted as a resident by the assisted living facility;
2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
4. At least one bathroom is accessible from a common area and:
   a. May be used by residents and visitors;
   b. Provides privacy when in use; and
   c. Contains the following:
      i. At least one working sink with running water,
      ii. At least one working toilet that flushes and has a seat,
      iii. Toilet tissue for each toilet,
      iv. Soap in a dispenser accessible from each sink,
      v. Paper towels in a dispenser or a mechanical air hand dryer,
      vi. Lighting, and
      vii. A window that opens or another means of ventilation;
5. An outside activity space is provided and available that:
   a. Is on the premises,
   b. Has a hard-surfaced section for wheelchairs, and
   c. Has an available shaded area;
6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and
7. The key to the door of a lockable bathroom, bedroom, or residential unit is available to a manager, caregiver, and assistant caregiver.

C. A manager shall ensure that:
1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
2. For every eight residents there is at least one working bathtub or shower; and
3. A resident bathroom provides privacy when in use and contains:
   a. A mirror;
   b. Toilet tissue for each toilet;
   c. Soap accessible from each sink;
   d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is not in a residential unit and used by more than one resident;
   e. A window that opens or another means of ventilation;
   f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
   g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers.

D. A manager shall ensure that:
1. Each resident is provided with a sleeping area in a residential unit or a bedroom;
2. For an assisted living home, a resident's sleeping area is on the ground floor of the assisted living home unless:
   a. The resident is able to direct self-care;
   b. The resident is ambulatory without assistance; and
   c. There are at least two unobstructed, usable exits to the outside from the sleeping area that the resident is capable of using;
3. Except as provided in subsection (E), no more than two individuals reside in a residential unit or bedroom;
4. A resident's sleeping area:
   a. Is not used as a common area;
   b. Is not used as a passageway to a common area, another sleeping area, or common bathroom unless the resident's sleeping area:
      i. Was used as a passageway to a common area, another sleeping area, or common bathroom before October 1, 2013; and
      ii. Written consent is obtained from the resident or the resident's representative;
   c. Is constructed and furnished to provide unimpeded access to the door;
   d. Has floor-to-ceiling walls with at least one door;
   e. Has access to natural light through a window or a glass door to the outside; and
   f. Has a window or door that can be used for direct egress to outside the building;
5. If a resident's sleeping area is in a bedroom, the bedroom has:
   a. For a private bedroom, at least 80 square feet of floor space, not including a closet or bathroom;
   b. For a shared bedroom, at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom; and
   c. A door that opens into a hallway, common area, or outdoors;

6. If a resident's sleeping area is in a residential unit, the residential unit has:
   a. Except as provided in subsection (E)(2), at least 220 square feet of floor space, not including a closet or bathroom, for one individual residing in the residential unit and an additional 100 square feet of floor space, not including a closet or bathroom, for each additional individual residing in the residential unit;
   b. An individually keyed entry door;
   c. A bathroom that provides privacy when in use and contains:
      i. A working toilet that flushes and has a seat;
      ii. A working sink with running water;
      iii. A working bathtub or shower;
      iv. Lighting;
      v. A mirror;
      vi. A window that opens or another means of ventilation;
      vii. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
      viii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in bathtubs and showers;
   d. A resident-controlled thermostat for heating and cooling;
   e. A kitchen area equipped with:
      i. A working sink and refrigerator,
      ii. A cooking appliance that can be removed or disconnected,
      iii. Space for food preparation, and
      iv. Storage for utensils and supplies; and
   f. If not furnished by a resident:
      i. An armchair, and
      ii. A table where a resident may eat a meal; and
7. If not furnished by a resident, each sleeping area has:
   a. A bed, at least 36 inches in width and 72 inches in length, consisting of at least a frame and mattress that is clean and in good repair;
   b. Clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for the resident;
   c. Sufficient light for reading;
   d. Storage space for clothing;
   e. Individual storage space for personal effects; and
   f. Adjustable window covers that provide resident privacy.

E. A manager may allow more than two individuals to reside in a residential unit or bedroom if:
1. There is at least 60 square feet for each individual living in the bedroom;
2. There is at least 100 square feet for each individual living in the residential unit; and
3. The manager has documentation that the assisted living facility has been operating since before November 1, 1998, with more than two individuals living in the residential unit or bedroom.

F. If there is a swimming pool on the premises of the assisted living facility, a manager shall ensure that:
1. Unless the assisted living facility has documentation of having received an exception from the Department before October 1, 2013, 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 (F)(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;
2. A life preserver or shepherd's crook is available and accessible in the swimming pool area; and
3. Pool safety requirements are conspicuously posted in the swimming pool area.

G. A manager shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

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.

36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:

(a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.

(b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.

(c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.

(d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 6, Article 2

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to seven (7) rules and four (4) tables in Title 9, Chapter 6, Article 2 regarding Communicable Disease and Infestation Reporting. Specifically, the rules describe the reporting requirements for health care providers, administrators of health care institutions or correctional facilities, schools, child care establishments, shelters, clinical laboratory directors, pharmacists and administrators of pharmacies, local health agencies, and federal or tribal entities, including under what circumstances they are required to report communicable diseases, to whom they are required to report, what information they are required to provide, and how they may make a report. The included tables outline the communicable diseases for which reports are required from for the various entities.

This is the first 5YRR for these rules.

Proposed Action

As described below, the Department is proposing to amend R9-6-202, Table 2.1, R9-6-204, and Table 2.3 to make them more effective. The Department indicates that, because of the number of different stakeholder groups, and the different capabilities of various health care

institutions, correctional facilities, and local health agencies in implementing the requirements put into these rules, the Department expects to seek and obtain a great deal of often conflicting stakeholder input. To adequately address stakeholder concerns, come to consensus, and achieve rules that are not overly burdensome, while protecting public health, the Department indicates it does not expect to be able to submit a Notice of Final Rulemaking to the Council before May 2024.

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 all the rules in the Article were last revised in a rulemaking effective January 1, 2018. The Department believes that except for the unanticipated effects of COVID-19 during the pandemic, and the continuing incidence of the disease, the Department believes that the costs and benefits identified in the 2018 EIS are generally consistent with the actual costs and benefits of the rule. Stakeholders include:

- The Department;
- Local health agencies;
- Local agencies responsible for vector control;
- Health care providers;
- Health care institutions;
- Correctional facilities, including both public and private;
- Schools and childcare establishments;
- Shelters;
- Clinical laboratories;
- Businesses employing individuals infected with a communicable disease, including owners or operators of restaurants or other food establishments;
- Owners or operators of aquatic venues;
- Pharmacists and pharmacies;
- Arizona Health Care Cost Containment System (AHCCCS);
- Third-party insurers;
- Cases or suspect cases of a communicable disease;
- Contacts of individuals infected with a communicable disease;
- Other patients or residents in a health care institution;
- Other prisoners or detainees in a correctional facility; and
- 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 states these rules provide requirements for the reporting of communicable diseases or related information by health care providers; health care institutions; correctional facilities, including both public and private; schools, childcare establishments, and shelters; clinical laboratories; and pharmacists and pharmacies. Reporting of this information allows for the tracking of disease cases, conducting epidemiological investigations, and the control of the spread of these diseases. They provide clarity and help to protect public health and safety consistent with statutory requirements. Because they are essential to public health and the protection of contacts of cases and the general public, the probable benefit of the rules outweigh their probable costs. The Department also believes that, in general, 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 but could be improved or made more effective in some circumstances.

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

The Department indicates it received no written criticism of the rules over the last five years.

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

The Department indicates the rules are mostly clear, concise, and understandable except that Table 2.1, Table 2.2, Table 2.3, and Table 2.4 could be improved if they used a symbol indicating that email is preferable when sending a report or notifying the Department within five working days, rather than using an "envelope" symbol. Additionally, Table 2.1, Table 2.3, and Table 2.4 could be improved if the "novel coronavirus infections," SARS, MERS, and SARS-CoV-2, were listed separately and if Monkeypox were added to the three Tables, rather than being included under "emerging or exotic infections."

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 generally effective, except for the following:

- **R9-6-202:** The rule would be more effective if the pregnancy status of a female case or suspected case were known, rather than being reported "if available," for certain communicable diseases associated with an increased mortality or morbidity of a pregnant woman, fetus, or infant.

- **Table 2.1:** The rule would be more effective if additional bacterial, viral, or fungal infections, which are likely becoming more common in Arizona, were added to the list of reportable diseases.
- **R9-6-204:** The rule would be more effective if, upon the request of the Department, the director of a clinical laboratory were required to report a negative test result for certain infectious agents or toxins in Table 2.3.
- **Table 2.3:** The rule would be more effective if additional bacterial, viral, or fungal infections, which are likely becoming more common in Arizona, were added to the list of reportable diseases. The rule would also be more effective if an isolate or specimen, as applicable, were required to be submitted, upon the Department's request, or genomic sequencing information were required to be reported, if available, for additional infectious agents or toxins.

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

The Department indicates the rules are enforced as written.

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

Not applicable. The Department indicates federal law is not applicable 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?

Not applicable. The Department indicates the rules do not require the issuance of a license, permit, or agency authorization.

11. Conclusion

This 5YRR from the Department relates to seven (7) rules and four (4) tables in Title 9, Chapter 6, Article 2 regarding Communicable Disease and Infestation Reporting. While the Department indicates the rules are generally clear, concise, understandable, consistent, and enforced as written, the Department is proposing to amend R9-6-202, Table 2.1, R9-6-204, and Table 2.3 to make them more effective. The Department indicates that, because of the number of different stakeholder groups, and the different capabilities of various health care institutions, correctional facilities, and local health agencies in implementing the requirements put into these rules, the Department expects to seek and obtain a great deal of often conflicting stakeholder input. To adequately address stakeholder concerns, come to consensus, and achieve rules that are not overly burdensome, while protecting public health, the Department indicates it does not expect to be able to submit a Notice of Final Rulemaking to the Council before May 2024.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

May 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. 6, Article 2, Five-Year-Review Report for Communicable Diseases and Infestations

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 2.

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 2. Communicable Disease and Infestation Reporting

May 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)

2. The objective of each rule:

Rule	Objective
R9-6-201	To define terms used only in Article 2 to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-6-202	To notify health care providers required to report and administrators of health care institutions or correctional facilities: a. Under what circumstances they are required to report communicable diseases, b. To whom they are required to report, c. What information they are required to provide, and d. How they may make a report.
Table 2.1	To specify the communicable diseases for which reports are required from health care providers required to report and administrators of health care institutions or correctional facilities; the time-frame for reporting; and under what circumstances reports are required, for example, only for outbreaks of the communicable disease.
R9-6-203	To notify administrators of schools, child care establishments, or shelters: a. Under what circumstances they are required to report communicable diseases, b. To whom they are required to report, c. What information they are required to provide, and d. How they may make a report.
Table 2.2	To specify the communicable diseases for which reports are required from administrators of schools, child care establishments, or shelters; the time-frame for reporting; and under what circumstances reports are required, for example, only for outbreaks of the communicable disease.
R9-6-204	To notify clinical laboratory directors: a. Under what circumstances they are required to report communicable diseases, b. Under what circumstances they are required to report the receipt of specimens for testing for the agents causing communicable diseases, c. To whom they are required to report, d. What information they are required to provide, and e. How they may make a report.

Table 2.3	To specify: a. The agents causing communicable diseases for which reports are required from a laboratory, and, if applicable, the type of test, the age of the subject for which a report is required, the type of test result, and whether the test results for other related agents are to be included in the report; b. Within what time period reports are required to be submitted; c. The agents for which an isolate or a specimen is required to be submitted to the Arizona State Laboratory; and d. If applicable, under what circumstances reports or isolates are required, for example, only for an initial positive test result for a communicable disease.
R9-6-205	To notify pharmacists and administrators of pharmacies: a. Under what circumstances they are required to report communicable diseases to the Department, b. What information they are required to provide, and c. How they may make a report.
R9-6-206	To notify local health agencies of the format to be used by different types of reporting persons when making a report of a communicable disease to the local health agency and require local health agencies to inform reporting persons of the format. To specify: a. Under what circumstances, how, and within what time period local health agencies are required to submit information to the Department; and b. The information to be submitted to the Department in each circumstance for which a report is required.
Table 2.4	To specify the communicable diseases for which reports are required from local health agencies; the time-frame for reporting; for which communicable diseases local health agencies are required to ensure that an isolate or specimen is submitted to the Arizona State Laboratory; and under what circumstances reports are required, for example, only for outbreaks of the communicable disease.
R9-6-207	To specify how, to the extent permitted by law, a federal or tribal entity is to report communicable disease-related information.

3. <u>Are the rules effective in achieving their objectives?</u> **Yes _<u>X</u>_** **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
R9-6-202	The rule would be more effective if the pregnancy status of a female case or suspected case were known, rather than being reported "if available," for certain communicable diseases associated with an increased mortality or morbidity of a pregnant woman, fetus, or infant.
Table 2.1	The rule would be more effective if additional bacterial, viral, or fungal infections, which are likely becoming more common in Arizona, were added to the list of reportable diseases.
R9-6-204	The rule would be more effective if, upon the request of the Department, the director of a clinical laboratory were required to report a negative test result for certain infectious agents or toxins in Table 2.3.
Table 2.3	The rule would be more effective if additional bacterial, viral, or fungal infections, which are likely becoming more common in Arizona, were added to the list of reportable diseases. The rule would also be more effective if an isolate or specimen, as applicable, were required to be submitted, upon the Department's request, or genomic sequencing information were required to be reported, if available, for additional infectious agents or toxins.

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
Multiple	The rule is clear, concise, and understandable, but could be improved if Table 2.1, Table 2.2, Table 2.3, and Table 2.4 used a symbol indicating that email is preferable when sending a report or notifying the Department within five working days, rather than using an "envelope" symbol.
Multiple	The rule is clear, concise, and understandable, but could be improved if the "novel coronavirus infections," SARS, MERS, and SARS-CoV-2, were listed separately in Table 2.1, Table 2.3, and Table 2.4, and if Monkeypox were added to the three Tables, rather than being included under "emerging or exotic infections."

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. The rules in Article 2 specify

reporting requirements related to communicable diseases. Information about the diseases reported and their numbers is available through: https://www.azdhs.gov/preparedness/epidemiology-disease-control/index.php#data-home.

All the rules in the Article were last revised in a rulemaking effective January 1, 2018. An economic, small business, and consumer impact statement (EIS) is available for the rulemaking. 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. Stakeholders were listed as including: the Department; local health agencies, including those responsible for vector control; health care providers; health care institutions; correctional facilities, including both public and private; schools, child care establishments, and shelters; clinical laboratories; pharmacists and pharmacies; cases or suspect cases of a communicable disease; and the general public.

The 2018 rulemaking extensively changed many Articles in the Chapter, including Article 2. The rules in Article 2 were revised to clarify existing requirements, update reportable conditions, ensure more accurate tracking and better reporting, and improve the effectiveness of the rules in preventing a significant threat to public health. In the EIS, the Department stated a belief that clarifying existing requirements would provide a significant benefit to all stakeholders. Receiving reports in a Department-provided format, which could include electronic reporting, was also anticipated to provide the Department with a significant benefit.

Several conditions that no longer need to be included as reportable conditions were removed and reporting requirements for other conditions were added to protect public health. The Department stated that adding these communicable diseases would make reporting more uniform across reporting entities and could result in the detection of additional cases as well. The EIS stated that these additions would impose no more than a minimal burden on the Department and might provide a significant benefit, while causing local health agencies to incur minimal-to-moderate costs (depending on the number of such diseases reported) and receive minimal-to-substantial benefits. Health care provider were thought to incur minimal additional costs, health care institutions minimal-to-moderate increased costs, and laboratories up-to-moderate increased costs, due to reporting additional diseases. Health care institutions were believed to incur minimal costs from reporting outbreaks of respiratory disease, but receive significant benefits if earlier reporting and institution of appropriate precautions and other responses results in less transmission and fewer cases. Health care provider were expected to receive a minimal-to-moderate benefit, and health care institutions a minimal-to-substantial benefit from the removal of reporting requirements for other communicable diseases. Correctional facilities were also believed to incur up to minimal costs due to the addition of requirements for information to be reported,

reporting outbreaks of respiratory disease, and adding reporting of some diseases. However, they were anticipated to receive up to moderate benefit from the removal of a requirement for other information, removal of reporting some diseases, and less transmission and fewer cases of respiratory diseases.

The Department estimated that changing requirements for submission by clinical laboratories of specimens or isolates from cases and suspect cases of communicable diseases, more timely information, and more complete information could result in the Department incurring minimal additional costs, but receiving up to a substantial benefit. Laboratories were believed to incur up to moderate increased costs due to the rule changes. However, they were also expected to receive a significant benefit from more consistent reporting requirements, electronic reporting, and submitting fewer specimens/isolates.

The EIS stated that changing local health agency reporting requirements, changing requirements for epidemiologic investigations by local health agencies, and clarifying the Department's role in the control of communicable diseases might provide a significant benefit to the Department. Local health agencies were anticipated to incur up to moderate costs and receive a minimal-to-moderate benefit from changing the time in which a local health agency is required to report to the Department, eliminating requirements for epidemiological investigations for removed diseases, and changing requirements for the epidemiological investigation of other diseases. Changing the time for a local health agency to conduct an epidemiologic investigation was expected to result in minimal-to-moderate costs, but minimal-to-substantial benefits.

The revised rules required schools and shelters to include the name and contact information for a parent or guardian of a child with a disease, infestation, or symptoms in the report made to a local health agency. This change was anticipated to add minimal costs to a school or shelter and result in significant benefits. Cases were expected to receive a significant benefit from the decrease in reporting time for some diseases. The general public was believed to receive a significant benefit from a reduction in the incidence of communicable diseases through improved reporting and control measures for the reportable diseases.

Except for the unanticipated effects of COVID-19 during the pandemic, and the continuing incidence of the disease, the Department believes that the costs and benefits identified in the EIS are generally consistent with the actual costs and benefits of the rule.

9. <u>Has the agency received any business competitiveness analyses of the rules?</u> Yes ___ No _X_

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

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

This is the first five-year-review report on these rules.

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 2, provide requirements for the reporting of communicable diseases or related information by health care providers; health care institutions; correctional facilities, including both public and private; schools, child care establishments, and shelters; clinical laboratories; and pharmacists and pharmacies. Reporting of this information allows for the tracking of disease cases, conducting of epidemiological investigations, and the control of the spread of these diseases. They provide clarity and help to protect public health and safety consistent with statutory requirements. Because they are essential to public health and the protection of contacts of cases and the general public, the probable benefit of the rules outweigh their probable costs. With the exception of the issues identified in paragraphs 3 and 6, 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 2.

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 2, 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.

The issues identified in paragraph 3 affect the effectiveness of the Article in enabling the Department to protect public health. Therefore, the Department plans to revise the rules in the Article, consistent with the issues identified in this report. Because of the number of different stakeholder groups, and the different capabilities of various health care institutions, correctional facilities, and local health agencies in implementing the requirements put into these rules, the Department expects to seek and obtain a great deal of often conflicting stakeholder input. To adequately address stakeholder concerns, come to consensus, and achieve rules that are not overly burdensome, while protecting public health, the Department does not expect to be able to submit a Notice of Final Rulemaking to the Council before May 2024.

TITLE 9. HEALTH SERVICES

CHAPTER 6. COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 1. GENERAL

ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING

ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

ARTICLE 11. STD-RELATED TESTING AND NOTIFICATION

ARTICLE 12. TUBERCULOSIS CONTROL

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 6. COMMUNICABLE DISEASES AND INFESTATIONS

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ARTICLE 11. STD-RELATED TESTING AND NOTIFICATION

ARTICLE 12. TUBERCULOSIS CONTROL

1. An identification of the rulemaking

Arizona Revised Statutes (A.R.S.) § 36-136(H)(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. The rules specifying reporting requirements for communicable diseases are in 9 A.A.C. 6, Article 2. The rules covering control measures for communicable diseases are in 9 A.A.C. 6, Article 3. The rules in 9 A.A.C. 6, Articles 2 and 3 contain requirements for the reporting of several conditions that no longer need to be included as reportable conditions and do not contain reporting requirements for other conditions that should be reportable to protect public health. The rules need to be revised to update reportable conditions and their control measures, ensure more accurate tracking and better reporting, and improve the effectiveness of the rules in preventing a significant threat to public health. The Department is revising the rules to address these concerns, account for changes in laboratory methodologies, allow for electronic reporting, and reduce the regulatory burden of the rules. The Department is also correcting cross-references in other Articles in the Chapter that were made incorrect by changes made as part of the rulemaking. Without the rule changes, Arizona would continue to have outdated rules that impose an undue burden on those entities required to report communicable diseases and infestations, do not address other conditions that should be reportable to protect public health, and are less effective in protecting the citizens of Arizona than they should be.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

- The Department
- Local health agencies
- Local agencies responsible for vector control
- Health care providers
- Health care institutions
- Correctional facilities, including both public and private
- Schools and child care establishments
- Shelters
- Clinical laboratories
- Businesses employing individuals infected with a communicable disease, including owners or operators of restaurants or other food establishments
- Owners or operators of aquatic venues
- Pharmacists and pharmacies
- Arizona Health Care Cost Containment System (AHCCCS)
- Third-party insurers
- Cases or suspect cases of a communicable disease
- Contacts of individuals infected with a communicable disease
- Other patients or residents in a health care institution
- Other prisoners or detainees in a correctional facility
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes and does not describe effects imposed by any changes made by a local health agency that are not required in the rules. No new FTEs will be required due to this rulemaking. Annual cost/revenue changes are 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 is listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Having rules to follow that are clearer and easier to understand	None	Significant
	Receiving reports in a Department-provided format, which may include electronic reporting	None	Significant
	Receiving information from clinical laboratories about additional cases and suspect cases of communicable diseases	Minimal	Significant
	Receiving more complete information from clinical laboratories about HIV-related tests	Minimal	None-to-substantial
	Changing requirements for submission by clinical laboratories of specimens or isolates from cases and suspect cases of communicable diseases	Minimal	Significant/Moderate
	Receiving more timely information from clinical laboratories about reported cases and suspect cases of communicable diseases	None	Significant
	Changing reporting requirements from local health agencies and requirements for epidemiologic investigations	None	Significant
	Clarifying the Department's role in the control of communicable diseases	None	Significant
	Changing requirements for syphilis testing	None	Significant
Local health agencies	Clarifying requirements related to communicable disease reporting or control measures	None-to-minimal	Significant
	Adding the reporting of some diseases and removing others	Minimal-to-moderate	Minimal-to-substantial
	Changing the time in which a local health agency is required to report to the Department	Minimal-to-moderate	Minimal-to-moderate/ Significant
	Eliminating requirements for epidemiological investigations for removed diseases	None	Minimal-to-moderate
	Changing requirements for the epidemiological investigation of some diseases	None-to-moderate	Minimal-to-moderate
	Changing the time for conducting an epidemiologic investigation	Minimal-to-moderate	Minimal-to-substantial/ Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Changing requirements for ensuring submission of specimens or isolates	None-to-minimal	None
	Allowing for additional control measures to be ordered by local health agencies	None	Significant
	Adding requirements for "suspect cases," including ensuring specimen/isolate submission	None-to-minimal	Moderate
	Allowing local health agencies more discretion in removing from exclusion	None	Significant
	Removing control requirements for local health agencies or making these requirements more flexible	None	Minimal-to-moderate
	Changing requirements for: - Control measures for certain diseases - Outbreak or environmental control measures for certain diseases	Minimal-to-substantial	Significant
	Providing health education or diphtheria prophylaxis	Minimal	None
Local agencies responsible for vector control	Conducting an assessment of the environment surrounding each case or suspect case of specified communicable diseases	None-to-substantial	Significant
Public correctional facilities	Clarifying reporting requirements and correcting cross references	None	Significant
	Adding requirements for information to be reported and removing a requirement for other information	None-to-minimal	None-to-minimal
	Reporting outbreaks of respiratory disease	None-to-minimal	Minimal-to-moderate
	Adding reporting of some diseases and removing others	None-to-minimal	Minimal-to-moderate
	Adding control measures applicable to the administrator of a correctional facility or shelter for certain diseases	Minimal-to-moderate	Minimal-to-substantial
	Requiring notification upon transferring individuals infected with drug-resistant organisms	Minimal	Minimal-to-substantial
	Changing reporting and control measures for tuberculosis	Minimal	Minimal-to-substantial
Public schools	Clarifying reporting requirements and correcting cross references	None	Significant
		Minimal	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Adds a requirement for the name and contact information for a parent or guardian of a child with a disease, infestation, or symptoms		
AHCCCS	Requiring notification upon transferring patients infected with drug-resistant organisms	None	None-to-substantial
	Adding requirements for syphilis testing of pregnant women to reduce congenital syphilis	None-to-substantial	None-to-substantial
B. Privately Owned Businesses			
Health care providers	Clarifying reporting requirements and correcting cross references	None	Significant
	Reporting newly listed communicable diseases	Minimal	None
	Removing some communicable disease reporting requirements	None	Minimal-to-moderate
	Requiring notification upon transferring patients infected with drug-resistant organisms	Minimal-to-moderate	Minimal-to-substantial
	Adding case control requirements for health care providers	Minimal-to-moderate	Significant
	Changing exclusion criteria for health care providers	Moderate-to-substantial	Significant
	Changing reporting and control measures for tuberculosis	Minimal	Significant
Health care institutions	Clarifying reporting requirements and correcting cross references	None	Significant
	Reporting newly listed communicable diseases	Minimal-to-moderate	None
	Reporting outbreaks of respiratory disease	Minimal	Significant
	Removing some communicable disease reporting requirements	None	Minimal-to-substantial
	Instituting additional isolation precautions	Minimal-to-moderate	Minimal-to-substantial
	Requiring notification upon transferring patients infected with drug-resistant organisms	Minimal-to-moderate	Minimal-to-substantial
	Changing reporting and control measures for tuberculosis	Minimal	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
Private correctional facilities	See "Public correctional facilities" above		
Schools or child care establishments	See "Public schools" above		
Shelters	Clarifying reporting requirements and correcting cross references	None	Significant
	Adds a requirement for the name and contact information for a parent or guardian of a child with a disease, infestation, or symptoms	Minimal	Significant
	Adds control measures applicable to the administrator of shelter for certain diseases	Minimal-to-moderate	Significant
Clinical laboratories	Clarifying reporting requirements and correcting cross references	None	Significant
	Adding the reporting of some diseases and removing others	None-to-moderate	None
	Changing requirements for reporting viral loads and CD4 counts related to HIV testing	None-to-moderate	Significant
	Changing the time in which a clinical laboratory is required to report to the Department	None-to-moderate	Significant
	Changing isolate/specimen submission requirements	None-to-minimal	Significant
	Reporting the drug sensitivity pattern for *Neisseria gonorrhoeae* if a drug sensitivity pattern was determined	None-to-moderate	None
Businesses employing individuals infected with a communicable disease, including owners or operators of restaurants or other food establishments	Changing exclusion criteria for cases of certain diseases who are working in a sensitive occupation - Making requirements more stringent for certain diseases - Making requirements less stringent for certain diseases - Removing exclusion requirements for certain diseases - Adding exclusion requirements for certain diseases	Minimal-to-moderate	Minimal-to-moderate
	Adding environmental control and health education requirements	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
Owners or operators of aquatic venues	Adds an exclusion from an individual using an aquatic venue for specific periods after diarrhea has resolved for certain diseases	Minimal	None-to-substantial
Pharmacists and pharmacies	Clarifies that reports are submitted in a Department-provided format	None	Significant
Third-party insurers	Requiring notification upon transferring patients infected with drug-resistant organisms	None	None-to-substantial
	Adding requirements for syphilis testing of pregnant women to reduce congenital syphilis	None-to-substantial	None-to-substantial
C. Consumers			
Cases or suspect cases of a communicable disease	Clarifying reporting and control requirements	None	Significant
	Decreasing time to report for some diseases	None	Significant
	Requiring notification upon transferring individuals infected with drug-resistant organisms	None	Significant
	Adding environmental control and health education requirements	None	Significant
	Allowing for additional control measures to be ordered by local health agencies	Significant	Significant
	Changing exclusion criteria for cases of certain diseases who are working in a sensitive occupation	Significant	Significant
	Adding requirements for syphilis testing	None-to-minimal	Significant
Contacts of individuals infected with a communicable disease	Removing contact control measures for some diseases	None	Significant
	Making some exclusion control measures for local health agencies more flexible	None	Significant
	Requiring notification of the parent of a contact of a pediculosis case	None	Significant
	Adding requirements for syphilis testing	None	Significant
	Adding alternative control measures to quarantine or exclusion	None	Significant

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
	Adding environmental control and health education requirements	None	Significant
	Requiring notification upon transferring individuals infected with drug-resistant organisms	None	Significant
Other patients or residents in a health care institution or other prisoners or detainees in a correctional facility to which a case is transferred	Requiring notification upon transferring individuals infected with drug-resistant organisms	None	Significant
General public	Clarifying reporting and control requirements	None	Significant
	Reducing the incidence of communicable diseases through improved reporting and control measures	None	Significant

- **The Department**

The Department receives over 174,000 communicable disease case reports annually from local health agencies, clinical laboratories, health care institutions, correctional facilities, schools and shelters, pharmacists, and health care providers required to report. Many of these case reports may be generated from multiple disease reports from different sources that relate to the same individual with the same disease. Of these over 174,000 case reports, more than 96,000 are considered to be new cases of communicable diseases. A summary of selected reportable communicable disease cases for 2016, broken out by month of report, is shown in Appendix 1. In Appendix 2, the number of cases of selected reportable communicable diseases, including sexually transmitted diseases, during the periods January to December 2015 and January to December 2016 is shown, as well as the five-year (2011 to 2015) median number of cases for the selected reportable communicable diseases. Confirmed and probable cases of selected non-sexually transmitted communicable diseases reported in January through December 2016, broken out by county, are shown in Appendix 3. The numbers of cases of chlamydia and gonorrhea in Arizona from 2007 to 2016 are provided in Appendix 4, which shows the steady increase in the number of cases in recent years. Appendix 5 shows the numbers of cases of primary or secondary syphilis in Arizona from 2007 to 2016, including the large increase in the number of cases in 2014 through 2016.

Due to the number of reports received by the Department, the number and variety of persons making reports, and the amount of time the Department spends following up on incomplete or inadequate reports or answering questions about the communicable disease rules, the Department believes that having rules that are clearer and easier to understand may provide a significant benefit to the Department since staff could then spend less time on these activities and more time analyzing the data received. This benefit extends to the correction of cross-references in Articles 10, 11, and 12, made necessary due to the renumbering in Article 3, which also contributes to clearer, more understandable rules.

In the almost 10 years since the rules in Articles 2 and 3 were last revised, more and more communicable disease reporting by health care providers, health care institutions, correctional facilities, and clinical laboratories has been through electronic means, rather than on a paper form submitted to the Department or a local health agency. Electronic reporting, especially by clinical laboratories, allows most of these reports to be submitted within one working day, regardless of the reporting time period required in the current rules. Electronic reporting not only means that reports are submitted more quickly to the Department, it also means the information is in the system and available for faster dissemination to local health agencies. This allows the information to get to the right people quickly, without a lag time while the report is waiting to be entered. This benefit also extends to the non-electronic reports as well, since increased numbers of electronic reports means that that the Department can enter and disseminate the information in a smaller number of non-electronic reports more quickly. Currently, all 15 local health agencies, four tribal public health organizations, 10 clinical laboratories, one correctional facility, two childcare establishments, and 176 health care institutions report through MEDSIS, a state-wide electronic reporting system for communicable disease. Another 14 clinical laboratories have begun reporting through "electronic laboratory reporting" or ELR, in which test results from the clinical laboratory's data system are electronically transferred to the Department and into MEDSIS, without the need for duplicate entry. More laboratories are in various stages of validation or are in the planning stages for ELR. As more facilities use electronic health records (EHR) and learn the benefits of reporting electronically, both from the standpoint of ease of reporting and because of federal "Meaningful Use" goals as part of the Medicare and Medicaid EHR Incentive Programs, more health care providers, non-hospital health care institutions, other larger correctional facilities, and large childcare establishments may voluntarily report electronically in the future. No schools, shelters, or pharmacies currently report electronically, and they are unlikely to be required to report electronically in the future.

To acknowledge this change and incorporate it into 9 A.A.C. 6, the new rules specify that reports are required to be submitted in a Department-provided format, wording consistent with other

Department rules. This allows for the Department to have the flexibility to tailor reporting requirements to best accommodate the needs of both the Department and reporting entities, allowing electronic submission of communicable disease information through MEDSIS or ELR and the retention of non-electronic means of reporting for other reporting entities. Having communicable diseases reported in a more consistent and, in many cases, electronic format will result in better data quality through fewer transcription errors, more timely reporting, and reduced staff time to enter cases, and allow for better analysis of submitted data and improved public health. The Department anticipates receiving a significant benefit from this change.

Several changes are being made to the list of laboratory reportable diseases in Table 2.3. Unlike the reporting of communicable diseases from other persons that report to the applicable local health agency, communicable disease reporting from clinical laboratories is submitted directly to the Department, and the Department informs the applicable local health agency about which cases need follow-up by the local health agency. The Department receives almost 500,000 disease reports annually from clinical laboratories, approximately 67% electronically. These range from a few hundred reports annually from small clinical laboratories to over 100,000 reports annually from large clinical laboratories. The new rules require laboratory reporting of additional communicable diseases, including *Anaplasma* spp., *Ehrlichia* spp., *Rickettsia* spp., leptospirosis, lymphocytic choriomeningitis, and yellow fever virus that are currently reported to local health agencies by health care providers, health care institutions, and correctional facilities. Leptospirosis, lymphocytic choriomeningitis, and yellow fever virus should already be reported by clinical laboratories as "emerging or exotic disease" agents, and *Rickettsia* spp. results are now being reported by many clinical laboratories, even though this reporting is not required in the current rules. Adding these communicable diseases will make reporting more uniform across reporting entities and may detect additional cases as well. In the past two years (2015-2016), the Department has received 1,835 disease reports about the added communicable diseases (*Anaplasma* spp./ *Ehrlichia* spp. – 8, *Rickettsia* spp. – 1,820, leptospirosis 5, lymphocytic choriomeningitis – 2, and yellow fever virus – 0) with 98% reported electronically, and does not believe that reviewing the additional reports and taking required action based on the reports will impose more than a minimal burden on the Department and may provide a significant benefit.

Currently, clinical laboratories are required to report only positive test results for HIV, except for infants, for whom all test results are reportable. During a recent grant site visit from a representative of the Centers for Disease Control and Prevention (CDC), a recommendation was made to expand the existing reporting requirements for HIV to include the viral load and CD4 count values for all HIV-related tests as a mechanism to improve case identification, allow classification of the

stage of the disease at diagnosis, and better monitor disease progression. Clinical laboratories already report virtually all viral load and CD4 count values (over 155,000 per year) because this information is required to be reported in all other states. Because they report negative results for individuals not already known to be HIV cases, the vast majority of these reports do not count towards the number of case reports. Of those that do, approximately 90% are tests associated with individuals already known to be HIV cases. Because all other states require this information to be reported, eligibility for some CDC grant funding is based on a state requiring the reporting of all viral load and CD4 count values. Since the current rules do not require all test results, even though the Department receives the information, Arizona is ineligible for this supplemental grant funding, which amounts to $988,000, and the CDC does not use Arizona data in some national aggregates for the same reason. To address these issues, another change being made to Table 2.3 is to require the results of all CD4-T-lymphocyte counts, not just the results if the count is fewer than 200 per microliter of whole blood or the CD4-T-lymphocyte percentage of total lymphocytes is less than 14%, and the results of all HIV-related tests except negative screening tests. The Department anticipates that these changes may provide up to a substantial benefit to the Department by providing better information about individuals infected with HIV, which the Department may use to develop better public health responses, and making the Department eligible for the CDC grant funding, while causing at most minimal additional costs to review additional reports.

The Arizona State Laboratory is a component of the Department that performs serological, microbiological, entomological, and chemical analyses on specimens and isolates submitted to the Arizona State Laboratory for testing. The current rules require clinical laboratories to submit isolates or specimens of specific agents to the Arizona State Laboratory. The Arizona State Laboratory receives approximately 10,000 isolates and specimens each year from clinical laboratories for identification and confirmation of disease status, as well as to establish relationships between cases of the disease, determine the drugs that may be used to treat an individual infected with the agent, and identify trends in the agent's surface antigen content that may affect vaccine effectiveness or public health control measures. Testing methodologies in clinical laboratories have changed since the current rules were adopted, with many tests not requiring a clinical laboratory to obtain an isolate from a specimen as part of the confirmation of a communicable disease. Because of this change, for most agents for which an isolate or a specimen is required, the new rules specify that a clinical laboratory is required to submit to the Arizona State Laboratory an isolate of the organism for each positive culture, if one is available, or a specimen for each positive test result. In the past three years, the Department has received approximately 250 case reports per year with culture-independent tests for communicable diseases for which an isolate is required under the current rules. Additional

specimens are already submitted for communicable diseases for which the requirement for submission is being newly added. If a specimen is submitted, the Arizona State Laboratory may obtain an isolate from the specimen if necessary to link cases to detect an outbreak or link other cases to an outbreak. According to the Arizona State Laboratory, the cost to the Department for the number of specimens currently submitted for which an isolate is derived is less than $400, although this cost could go up as more laboratories begin using tests that do not require an isolate. Therefore, this change to require an isolate, if available, or a specimen to be submitted may cause the Department a minimal increase in costs and provide a significant public health benefit.

For some diseases, the Department does not need an isolate or a specimen from every case for public health purposes, but does need one in some instances. To reduce the burden on the Arizona State Laboratory for receiving, cataloging, and storing unnecessary isolates or specimens, as well as on clinical laboratories for sending them, the new rules are being changed to make the submission of isolates or specimens for five communicable diseases required by request only, rather than for every positive result. For an additional 10 communicable disease, submission of isolates or specimens is newly being required by request only. The Department anticipates that this may result in 1,200 to 1,800 fewer isolates or specimens being received by the Department. The Department believes that these changes may provide a moderate benefit to the Department.

The new rules also require health care provider/health care institution/correctional facility and laboratory reporting in a shorter time period, one day rather than five days after a positive test result, for several other communicable diseases including dengue, hepatitis A, and Legionnaires' disease. Receiving more timely information from these persons about reported cases and suspect cases of communicable diseases is possible due to working closely with these reporting entities, electronic reporting, and improved testing methodologies, allowing the Department to initiate a more timely and effective response. For the communicable diseases for which the time period for reporting is being decreased from five days to one working day, over 66% of reports are already being received within one working day. By shortening the required time period for reporting, the Department anticipates that the percentage of reports received within one working day will increase. The Department believes that these changes may provide a significant benefit to the Department by allowing the Department to respond to individual cases more quickly to reduce the chance of an outbreak, as well as to detect outbreaks more quickly to reduce the number of new cases.

After a local health agency receives a report of a communicable disease, the local health agency submits a report to the Department. In the new rules, the time period for local health agency reporting of many communicable diseases is being changed, for the most part to be consistent with the shorter time periods for reporting in Table 2.1. Local health agency reporting of communicable diseases is

also being changed to include the new communicable diseases required to be reported to a local health agency under R9-6-202 and Table 2.1, such as arboviral infections. Arboviral infections are already reportable to the Department by clinical laboratories under the current rules and would, therefore, be reported by the Department to the applicable local health agency for follow-up. The category "arboviral infections" may include both communicable diseases specifically listed, such as malaria or yellow fever and the newly listed chikungunya and Zika virus infection, and those not already reportable under other listed diseases. The latter two arboviral infections could already have been reported under R9-6-202 and Table 2.1 as "emerging or exotic disease" but are being broken out to establish routine surveillance. This redundancy in reporting categories helps ensure that all cases of these types of infections are reported.

For most communicable diseases, local health agencies are also required to conduct an epidemiologic investigation to determine the source of infection and mitigate the spread of the communicable disease, and an epidemiologic investigation is also being required for the newly added diseases. The time period for submission of an epidemiologic investigation is also being shortened from 60 days to 30 days for four communicable diseases for consistency as well. The new rules also change the time period for reporting an outbreak to the Department from "one working day" to "24 hours" after receiving the report or reports. The Department anticipates that receiving more timely information from local health agencies about reported cases and suspect cases of communicable diseases, including the information gathered as part of an epidemiologic investigation, may provide a significant benefit to the Department and improve public health.

The new rules also clarify the Department's role in the control of communicable diseases. Added to R9-6-303 is information that the Department may isolate or quarantine an individual or group of individuals or require additional control measures under A.R.S. § 36-136(G). The new rules also clarify that the Department may order the exclusion of a food handler from working according to the requirements in the Article. A requirement for the Department to review each case report of *Chlamydia trachomatis* infection or gonorrhea for completeness, accuracy, and need for follow-up is also being removed. With approximately 33,725 chlamydia cases and 9,300 gonorrhea cases reported annually, and increasing each year, the Department does not have the time and resources (personnel) to review every case. However, the Department uses statistical analysis tools to review the database of gonorrhea and chlamydia reports for quality, completeness, and the need for public health action. For example, the Department has used the data submitted to determine populations at high risk for or with a high-prevalence of gonorrhea and chlamydia. Based on this analysis, the Department is paying for gonorrhea and chlamydia testing through a federal grant for females 24 years of age and younger in targeted local health agency clinics, clinics serving women at high risk for infection/transmission,

juvenile correction facilities, and some county jails. In identifying gonorrhea and chlamydia in these high-risk, high-prevalence populations and allowing for the cases to receive treatment, the Department hopes to prevent further disease transmission and potential life-threatening complications due to untreated infections and decrease the rise in incidence rates for these diseases. Thus, this rule change will allow the Department the flexibility to focus resources on a population health basis. The Department believes that these clarifications of the Department's role will provide a significant benefit to the Department. The Department also believes that the changes in the new rules will provide a significant benefit to public health in Arizona.

The new rules also add requirements related to syphilis. From 2009 to 2016, the annual number of syphilis cases in Arizona more than tripled, with the rate of syphilis in Arizona doubling from 4.4 cases per 100,000 to 8.6 cases per 100,000 people from 2013 to 2014. The new rules allow a local health agency to recommend more frequent or longer duration of serologic testing for a syphilis case to detect treatment failure or re-infection, which is especially prevalent in high-risk populations and potentially lethal for the fetus of a pregnant woman. This change may provide a significant benefit to public health in helping to reduce the risk of syphilis transmission in Arizona.

In 2015, Arizona ranked seventh in the country in rates of congenital syphilis, with 14 cases and a rate of 16.4 per 100,000 live births compared with the national rate of 12.4 per 100,000 live births. The 2015 figures are an improvement, though, from 2007 when Arizona ranked second in the country in the number of congenital syphilis cases. Congenital syphilis is caused by transmission of the agent causing syphilis from a pregnant woman to the fetus or newborn, thereby causing stillbirth, premature birth, and potential deformities in the newborn. For those babies with congenital syphilis that survive, the cost of care for a single case of congenital syphilis may be almost $2 million dollars over a lifetime. The Department estimates that adding a requirement for a health care provider for a pregnant syphilis case to order serologic testing for syphilis at 28 to 32 weeks gestation and at delivery may further reduce the rate of congenital syphilis in Arizona and provide a significant public health benefit to the Department and the state.

- **Local health agencies**

Local health agencies are responsible for carrying out most of the control measures for cases or suspect cases within their jurisdictions. As required by the rules, the employees of local health agencies receive the reports of cases or suspect cases of reportable communicable diseases that are submitted by health care providers required to report and the administrators of health care institutions, correctional facilities, schools, child care establishments, and shelters. These employees also receive reports from the Department of cases or suspect cases submitted to the Department by clinical laboratories. Local health agencies may conduct epidemiologic investigations based on these reports.

Each year local health agencies in Arizona receive more than 48,000 reports of communicable disease cases or suspect cases under R9-6-202 and R9-6-203, which are entered into the Department's communicable disease data systems and are viewable, when appropriate, by other local health agencies and the Department, avoiding the need for a local health agency to maintain a separate database system with duplicate entry. The Department anticipates that local health agencies may receive a significant benefit from the clarified requirements related to communicable disease reporting or control measures and from the more consistent reporting requirements in Tables 2.1, 2.3, and 2.4, since local health agencies may receive more complete and accurate reports and be able to complete epidemiologic investigations more efficiently. A similar benefit may be derived from the new rules including that reports submitted to a local health agency or the Department are in a Department-provided format and that local health agencies are required to inform health care providers required to report and administrators of health care institutions, correctional facilities, schools, child care establishments, and shelters of the format to use when making a report, rather than just supplying forms. The Department anticipates that a local health agency could incur up to a minimal cost to explain new requirements.

As mentioned above, the new rules add the reporting of some highly significant communicable diseases, two of which (chikungunya and Zika virus infection) would previously have been included as arboviral infections in laboratory reporting and as "emerging or exotic disease" under Table 1 and Table 4. Cases of both of these infections have emerged in the Americas within the last five years, prior to which cases were virtually unheard of in this part of the world. These diseases pose a threat to Arizona travelers who visit locales where the diseases are endemic, and pose a risk for becoming local to Arizona due to the presence in parts of the state of the mosquito that transmits these diseases. Significant resources are already involved in responding to both, and the Department wants to ensure that it is clear that they are reportable and that responsibilities are clearly spelled out as reports and investigations become more routine. Because the Department expects a very small number of cases of the other added communicable diseases, the Department anticipates that local health agencies may receive a few additional reports about the communicable diseases added to Table 2.1 and, therefore, submit a few additional reports to the Department under R9-6-206 and Table 2.4. Since arboviral infections are currently reportable by clinical laboratories, the Department already reports these cases or suspect cases to the applicable local health agencies for follow-up and estimates that listing arboviral infections separately would result in only a few additional reports per year, unless a new arboviral disease emerges, similar to chikungunya or Zika virus infections. However, this emergence would be independent of whether the rules were changed and does not factor into this assessment. Therefore, while local health agencies may receive a few more reports due to the addition of

communicable diseases in Table 2.1, local health agencies may not be performing a proportionate increase in epidemiologic investigations and other associated activities due to their addition. In addition, while hepatitis C (approximately 12,000 cases annually) is reportable under Table 2.1, local health agencies no longer are required to report cases and suspect cases of hepatitis C to the Department or complete an epidemiologic investigation for each report, only for outbreaks, because resources do not exist to follow up on each case, making it ineffective to keep the requirement. As shown in Appendix 3, there is a wide variation in the number of cases of communicable diseases reported across Arizona's counties, with some counties reporting few cases and others a large number. The Department anticipates that a local health agency may incur a minimal-to-moderate burden from the addition of new reportable communicable diseases, depending on the county and the number of cases in the county.

As mentioned in the 2014 five-year-review report for Article 2, the new rules also remove the reporting under R9-6-202 of other communicable diseases, such as aseptic meningitis, enterotoxigenic *Escherichia coli*, Kawasaki syndrome, Reye syndrome, unexpected death with a history of fever, and vancomycin-resistant *Staphylococcus epidermidis*. Aseptic meningitis (approximately 450 cases per year) is a relatively common and rarely serious condition, with no relevant control measures, and enterotoxigenic *Escherichia coli* (approximately 30 cases per year) is a cause of travelers' diarrhea, for which there is no useful testing method for surveillance. Reye syndrome (no cases in the past year) and Kawasaki syndrome (approximately 35 cases per year) are being removed because they are not technically communicable diseases and the control measures for these conditions are no longer contained in 9 A.A.C. 6, Article 3. Reye syndrome may develop in a child who is given aspirin to treat the symptoms of a viral infection. There is no known infectious agent that causes Kawasaki syndrome, which is diagnosed in an individual based on the symptoms displayed by the individual. The condition, unexplained death with a history of fever, was originally added to assist with detecting severe cases of unknown etiology that would be revealed, after investigating and identifying the cause, to be infectious diseases needing urgent follow-up and the implementation of control measures. After several years of collecting these reports through surveillance and epidemiologic investigations, the Department determined that the condition is nebulous and cases reported under this condition are most often not a significant health risk. Therefore, as part of the last five-year-review of 9 A.A.C. 6, Article 3, the Department allowed the Section containing the control measures for the condition to expire. Those unexplained deaths with a history of fever that are significant could be reported under another reportable condition, such as emerging or exotic diseases. The Department is unaware of any communicable disease cases that were detected in the last five years as a result of a report of unexpected deaths with a history of fever

for which additional control measures should have been implemented. On the other hand, local health agencies have received less than 300 reports annually for cases of genital herpes infections, of the CDC-estimated over 500,000 cases in Arizona. Because of the lack of reporting and public health follow-up needed, the reporting requirement for genital herpes infections is also being removed from R9-6-202. The Department believes that a local health agency may receive a minimal-to-substantial benefit from the removal of these reportable communicable diseases from the new rules, depending on the number that had previously been received and acted upon.

The new rules decrease the time allowed for a local health agency to report some communicable diseases from five days to one working day, as mentioned above. For these communicable diseases, approximately 83% of reports are entered/submitted within one working day. Only 9% are reported during the one-to-five day period affected by the rule change and would need to be reported sooner to be in compliance with the new rules requirements. The time to report is increased from within "24 hours" to within "one working day" for three communicable diseases, mumps, rubella, and vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*. For the first two, this time period is consistent with the time periods for reporting currently in Table 1 and unchanged in Table 2.1. For vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, the time period for reporting under Table 1 (and unchanged in Table 2.1) remains at "24 hours" because it is more critical for a report to get to a local health agency as soon as possible, so the local health agency can begin public health activities associated with the case. This change would be expected to affect fewer than 35 reports per year. The Department anticipates that a local health agency may incur a minimal-to-moderate burden from the decrease in time to report to the Department and may receive a minimal-to moderate benefit from changes increasing the reporting time, with smaller local health agencies with fewer staff perhaps receiving a significant benefit from the increased time since reports about these communicable diseases would no longer need to be reported over weekends or holidays, thereby reducing overtime costs. Local health agencies may also receive a significant benefit from the clarification under communicable disease control measures in Article 3 of when a local health agency is required to notify the Department and from additional information being required in reports submitted under R9-6-202 and R9-6-203. These latter changes could result in less time being spent collecting this information from the reporting person after the local health agency received the report.

Some requirements for epidemiologic investigations are also changed in the new rules. While an epidemiologic investigation within 30 days is required for the newly added communicable diseases, the approximately 100 epidemiologic investigations that would be required per year are already being done because the cases would already have been reported to local health agencies

through clinical laboratory reporting to the Department or under "emerging or exotic disease." An epidemiologic investigation is no longer required under the new rules for the communicable diseases being removed, which may result in approximately 450 fewer epidemiologic investigations per year. The Department believes that conducting epidemiological investigations for these diseases may have cost a local health agency between $100 and $10,000 per year, depending on the number of cases and the disease. Therefore, a local health agency with any of these diseases reported within its jurisdiction may receive a minimal-to-moderate benefit from their removal as reportable communicable diseases.

The requirements for epidemiologic investigations are also being removed for the approximately 9 scabies outbreaks per year, 60 streptococcal group B invasive infections per year in an infant younger than 90 days of age**,** and 67 *Streptococcus pneumoniae* cases or suspect cases under five years of age per year. Because the latter is a vaccine-preventable disease but some agents have developed antibiotic resistance, an epidemiologic investigation would be required only in the rare event of an outbreak. Due to the large number of cases and suspect cases of hepatitis C (12,000 per year), and the long incubation period between exposure to the virus and when symptoms appear, an epidemiologic investigation of each hepatitis C case or suspect case is of limited value and will no longer be required under the new rules, except if an outbreak is suspected. The Department estimates that a local health agency may receive a minimal-to-moderate benefit from not conducting epidemiological investigations for these diseases, depending on the number of cases. Conversely, an epidemiologic investigation is now required under the new rules for each case or suspect case of giardiasis (approximately 170 per year), rather than just in an outbreak, to enable the local health agency to determine if the reported individual meets the definition of a case and whether the case works in a sensitive occupation and should be excluded from working to prevent an outbreak. Since a local health agency is already conducting an epidemiological investigation for a giardiasis outbreak, which would include determining the cases that are part of the outbreak and contacting the cases to determine the possible sources of the outbreak, the Department believes that investigating each case would add at most a moderate cost to a local health agency.

The time period for completion of an epidemiologic investigation is also shortened from 60 days to 30 days under the new rules for basdiobolomycosis (approximately one per year), Creutzfeldt-Jakob disease (approximately 40 per year), cysticercosis (approximately three per year), and Hansen's disease (approximately one per year) to simplify the requirements for conducting these epidemiologic investigations by making them consistent with the time periods for epidemiologic investigations for other communicable diseases. As mentioned above, the new rules also change the time period for reporting an outbreak to the Department from "one working day" to "24 hours" after receiving the report or reports (approximately 200 per year) to enable the Department to respond

more quickly to the outbreak. Because the number of cases for which an epidemiologic investigation will be newly required is expected to be low, while the number of cases for which an epidemiologic investigation will no longer be required is much higher, the total number of epidemiologic investigations conducted by a local health agency may be reduced under the new rules. The Department believes that changes that add requirements for epidemiologic investigations may impose a minimal-to-moderate burden on a local health agency and that a local health agency may receive a minimal-to-substantial benefit from the removal of requirements for epidemiologic investigations for other communicable diseases. The new rules also clarify that a local health agency may conduct an epidemiologic or other investigation, even if not specifically required by this Chapter, in cooperation with the Department. The Department believes this clarification may provide a significant benefit to a local health agency.

As mentioned above, the new rules change requirements for clinical laboratories to submit isolates/specimens to the Arizona State Laboratory. The new rules make corresponding changes to the requirements for local health agencies to ensure the submission of isolates or specimens to the Arizona State Laboratory, with an isolate/specimen being newly required for seven communicable diseases. These represent high priority communicable diseases for which the submission of an isolate or a specimen is vitally important for public health purposes. Except for Zika virus infections, for which over 700 specimens were received in 2016 as part of investigations of suspect cases, fewer than 10 cases or suspect cases of the diseases are reported each year. However, for many communicable diseases, the submission of an isolate/ specimen is only required upon the request of the Department. Local health agencies are not required to ensure the submission of isolates/specimens for the communicable diseases for which submission is required by request only, so a burden is not being imposed on a local health agency due to this change in submission requirements. Based on the estimates of the numbers of cases or suspect cases for which a local health agency may now be required to ensure submission compared with the number for which a local health agency is already ensuring submission or the estimated number for which a local health agency will no longer be required to ensure submission, the Department anticipates that these changes may cause at most a minimal additional cost to a local health agency.

As part of a local health agency's responsibilities under A.R.S. § 36-624, the local health agency may adopt quarantine and sanitary measures consistent with Department rules. In R9-6-303, the Department specifies rules for isolation and quarantine. To ensure public health and safety and avoid the need for isolation or quarantine in some instances, the new rules provide additional control measures that a local health agency may use to reduce the threat of the spread of a communicable disease. These include exclusion from working in a sensitive occupation/location; avoiding other

locations, such as a mall or entertainment venue, where an affected individual may pose a health risk to other individuals; and receiving prophylaxis or an immunization as an alternative to or to reduce the length of exclusion. Local health agencies are already employing these additional control measures in many situations for the approximately 5-10% of cases in sensitive occupations, but their addition to the rules in R9-6-303 and for specific communicable diseases in other Sections may make it easier for a local health authority to ensure compliance, address unanticipated situations, and avoid taking stronger control measures. Changes to the laboratory-testing-based criteria for removal from exclusion may also allow a local health agency to remove a case or suspect case from exclusion with less follow-up. The Department anticipates that these changes may provide a significant benefit to a local health agency.

The new rules also add requirements for "suspect cases" to case control measures for certain diseases. Because it may be the Department that determines whether a suspect case is a case, after laboratory testing by the Arizona State Laboratory, the new rules add that a local health agency shall ensure that isolates (or specimens) from not only cases but also suspect cases are submitted to the Arizona State Laboratory for anthrax, botulism, glanders, measles, melioidosis, mumps, plague, poliomyelitis, rubella, tularemia, viral hemorrhagic fever, yellow fever, Zika virus infection. The Department believes that specimens for most, if not all, of the approximately 1,000 suspect cases per year of these communicable diseases are already submitted to the Arizona State Laboratory. Therefore, the change may be more of a clarification of what is already occurring than an additional responsibility. The Department anticipates that this change may result in the submission of any specimens not already being submitted and enable the Arizona State Laboratory to identify cases faster so local health agencies can take actions to reduce the spread of the disease to others, thereby reducing the number of individuals requiring epidemiologic investigations. Thus, the change may impose up to a minimal additional burden on a local health agency for ensuring the submission of more specimens/isolates, but also provide up to a moderate benefit in reducing the number of additional cases reported, which would save the local health agency the expense of investigating them.

Since local health agencies carry out most of the control measures for cases or suspect cases within their jurisdictions, the new rules give local health agencies more authority in determining whether a case or suspect case of communicable diseases such as amebiasis, campylobacteriosis, giardiasis, norovirus, salmonellosis, or shigellosis, in a sensitive occupation is unlikely to infect other individuals and may return to work. Under the new rules, a local health agency may also determine whether a suspect case of mumps, pertussis, or rubella is unlikely to be infectious. In addition, local health agencies, rather than physicians, physician assistants, or registered nurse practitioners, may

determine that a suspect case of measles may return to a school or child care establishment. For giardiasis, the option of removal of the exclusion from working for sensitive occupations with negative stool specimens is being taken out of the new rules, which now require a case or suspect case to be cleared by a local health agency. These changes permit the staff of a local health agency to use their judgment to tailor a response to a situation, rather than fit the situation to a rule requirement, allowing for a more flexible and logical application of the rules. The Department anticipates that these changes may provide a significant benefit to a local health agency in protecting public health.

Under the new rules, local health agencies will not be required to determine if treatment of a botulism case is required. Contact control measures that had been required of local health agencies are being removed for Shiga-toxin producing *Escherichia coli*, giardiasis, salmonellosis, and shigellosis, largely to reduce ambiguity because a contact with diarrhea would be considered a suspect case and would be covered under "case control measures." Because of the large number of cases of hepatitis C reported each year and the limited resources to follow up on communicable disease cases, case control measures are being removed and replaced with outbreak control measures. These include a requirement for evaluating a health care provider identified as the source of hepatitis C virus transmission in the work place, in the rare instance that this situation would occur, and, if indicated, ensuring reassignment of the health care provider to a position where the occupational risk of continuing transmission is eliminated. In addition, the new rules require consultation by a diagnosing health care provider or an administrator of a health care institution with the local health agency in the infrequent circumstance when isolating and instituting droplet precautions for a rubella case. Because of the more than 159% increase in the number of syphilis cases in Arizona from 2006 to 2015, the new rules allow a local health agency to recommend more frequent or longer duration of serologic testing for a syphilis case than the requirements currently in rule, thereby reducing the risk of further transmission. The Department estimates that these changes may provide a minimal-to-moderate benefit to a local health agency due to the net decrease in the number of instances in which a local health agency is required to take action, compared with the number under the current rules, mainly due to the removal of the requirement for hepatitis C case follow-up.

The new rules also add some responsibilities for local health agencies. Sections containing control measures for the newly reportable communicable diseases have been added to Article 3. These include local health agency requirements for case control measures for arboviral infections, babesiosis, chikungunya, glanders, novel coronavirus, and Zika virus infections. As mentioned above, cases of arboviral infections, babesiosis, glanders, and novel coronavirus are very rare. For cases of chikungunya or Zika virus infection, the Department estimates control measures are already occurring for more than 90% of cases. Environmental control measures have been added in the new

rules for dengue, malaria, West Nile virus infection, and yellow fever to reduce the risk of a mosquito in Arizona biting an infected individual and transmitting the disease to another individual the next time the mosquito bites. Environmental control measures are also being added for arboviral infections, chikungunya, and Zika virus infections, and are already occurring for the majority of cases and suspect cases for these conditions. Outbreak control measures are being added for carbapenem-resistant enterobacteriaceae, methicillin-resistant *Staphylococcus aureus*, and respiratory disease in a health care institution or correctional facility. During 2015 and 2016, local health agencies assisted in the investigation of one outbreak of methicillin-resistant *Staphylococcus aureus*, and 16 outbreaks of respiratory disease in health care institutions. Since local health agencies are already performing many of the activities being newly required in the rules, the Department believes that additional costs would arise through a higher number of cases/suspect cases being reported, rather than any change in the activities being conducted by local health agencies. The Department estimates that these changes may cause a minimal-to-substantial increase in cost to a local health agency, depending on the number of cases or outbreaks, but provide a significant public health benefit to a local health agency.

A local health agency is required under the current R9-6-302 to provide health education to a disease case or contact to reduce the risk of transmission of the respective disease. The new rules clarify that for certain communicable disease spread by mosquitos, such as chikungunya, West Nile virus, and Zika virus infections, health education is required to include measures to avoid mosquito bites and reduce mosquito breeding sites. The new rules also require a local health agency to offer prophylaxis to a diphtheria contact, in the rare instance that is necessary. The Department believes that these changes may cause a minimal cost to a local health agency, depending on the number of cases or contacts.

- **Local agencies responsible for vector control**

The environmental control measures for arboviral infections, chikungunya, dengue, malaria, West Nile virus infection, yellow fever, and Zika virus infections mentioned above are necessary because these diseases are spread through the bite of an infected mosquito, which is known as the vector for the disease. The *Aedes* mosquito responsible for the spread of chikungunya and Zika virus, as well as dengue and yellow fever, are found in Arizona, are closely associated with humans and their dwellings, and do not travel far. The mosquitos responsible for the spread of malaria and West Nile virus infections have also been found in Arizona. Therefore, if these mosquitos are found near an individual who has one of these communicable diseases, the mosquito could bite the individual, pick up the organism causing the communicable disease, and spread it to a new individual through another bite. For other communicable diseases, another type of vector, such as a tick, may be responsible for

transmission. To prevent such transmission, the environment around an individual who may be infected with one of these communicable diseases needs to be assessed so measures can be taken to reduce the number of vectors and their breeding places. In some counties, this assessment is performed by the local health agency. In other counties, a local agency responsible for vector control, such as the Yuma County Pest Abatement District or Bullhead City Pest Abatement District, performs the assessment. This assessment is routinely performed in some counties or for some communicable disease, but not others. The Department anticipates that an environmental assessment would be performed for all cases of chikungunya, dengue, yellow fever, and Zika virus infections, for some cases of spotted fever rickettsiosis, and occasionally for cases of malaria and West Nile virus infections. If a local agency responsible for vector control in a jurisdiction is the entity that normally performs such assessments in the jurisdiction, the Department believes that the new requirements for assessments to be performed may cause a local agency responsible for vector control in the jurisdiction to incur a minimal-to-moderate burden for performing additional assessments if the local agency responsible for vector control were not already performing them. The new requirements are also expected to provide a significant public health benefit.

- **Health care providers**

  The Department receives approximately 78,000 disease reports per year from health care providers and health care institutions. Because a report from a health care institution may come from a health care provider required to report or the health care institution's infection control program staff, it is not possible to determine the number of individual health care providers reporting. A health care provider may receive a significant benefit from the clarification of the rules. As mentioned above, new communicable diseases are being added to the list in Table 2.1 for health care providers required to report and the administrators of health care institutions and correctional facilities. Almost all of these added communicable diseases should already have been reported under "emerging or exotic disease," so listing them specifically should clarify that they need to be reported, rather than add to the burden of reporting. In addition, the Department anticipates that the incidence of cases will also be very low, including for arboviral infections not covered by explicitly listed diseases. However, if a health care provider required to report under R9-6-202 and Table 2.1 had not reported cases or suspect cases of these communicable diseases under the current rules, the Department expects that the health care provider required to report may incur up to a minimal burden for reporting them, because of the low incidence of these communicable diseases. A health care provider required to report might also incur minimal additional costs due to the added information being required in a report and from the reduced time to report certain communicable diseases.

These costs for reporting are more than offset by other changes to reporting requirements in the rules. As indicated in the 2014 five-year-review report, the requirement for reporting cases or suspect cases of herpes genitalis is being removed in the new rules. Currently, between 250 and 300 cases are reported annually 1,500 by health care providers required to report. Since the disease is so prevalent and not reported in most instances, the usefulness of the information for public heath purposes does not outweigh the burden to health care providers required to report. For reasons described above, requirements for reporting of aseptic meningitis, enterotoxigenic *Escherichia coli*, Reye syndrome, Kawasaki syndrome, and unexplained death with a history of fever are also being removed. The Department estimates that these changes may provide a minimal-to-moderate benefit to a health care provider required to report, depending on the number of cases the health care provider encounters. Changing the names used for certain reportable conditions to be more descriptive, such as separating anaplasmosis from ehrlichiosis, or to use more updated terminology, such as replacing enterohemorrhagic *Escherichia coli* with Shiga toxin-producing *Escherichia coli*, may also provide a significant benefit to a health care provider.

Antibiotics have been used to treat patients with infectious diseases for over 70 years. In that time, some of the agents causing these diseases have developed mechanisms to protect themselves from the effects of an antibiotic, and they have become resistant to the antibiotic. Because of this resistance, an infection caused by these agents is hard to treat and, according to the CDC, at least 23,000 people die each year in the United States as a result of these infections. To reduce the spread of resistant agents, the new rules require a diagnosing health care provider or an administrator of a health care institution or correctional facility transferring an individual known to be infected with certain of these resistant agents to notify the entity to which the individual is being transferred about the resistant infection. In that way, the receiving entity can take precautions to reduce the chance the infection may be spread. For health care providers, this notification is required for multi-drug-resistant organisms under R9-6-305; for carbapenem-resistant enterobacteriaceae and *Clostridium difficile*, considered by the CDC to be "Urgent Threats" to public health due to resistance; and for methicillin-resistant *Staphylococcus aureus* (MRSA) and vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, also considered by the CDC to be threats to public health. The Department believes that this notification is already being provided by most health care providers as standard of care. If a health care provider were not making this notification, requiring notification may cause a minimal-to-moderate cost to a health care provider, depending on the number of cases for which notification would need to be made, but provide an offsetting minimal-to-substantial benefit to the receiving health care provider by reducing the chance the infection would spread.

Case control measures for some communicable diseases require a diagnosing health care provider to institute isolation precautions to reduce the spread of the communicable disease. While isolation precautions should already have been occurring as a standard of care, these requirements have been added in the new rules for carbapenem-resistant enterobacteriaceae, novel coronavirus, and smallpox to clarify the need for these precautions. The Department anticipates that the new rules may impose a minimal-to-moderate cost on a health care provider who diagnoses one of these diseases and has not been instituting isolation precautions as a standard of care and provide a significant benefit in reducing the threat of disease transmission.

The new rules also require a health care provider for a pregnant syphilis case to order serologic testing for syphilis at 28 to 32 weeks gestation and at delivery to reduce the risk of the baby being born with congenital syphilis. This requirement is consistent with a 2007 Board Order issued by Maricopa County, requesting a third trimester blood test for syphilis in all pregnant women and a blood test for newborns or their mothers at the time of delivery. The Board Order also requires a blood test for syphilis on the mother or umbilical cord of a stillborn infant. This requirement has been shown to be effective in reducing the number of babies with congenital syphilis. In 2007, there were 28 cases of congenital syphilis in Arizona, with 20 occurring in Maricopa County. By 2009, the number of congenital syphilis cases in Maricopa County had dropped to 13, while the total number of congenital syphilis cases in Arizona had risen to 30. Through efforts of the Department and community partners, the number of congenital syphilis cases in Arizona fell to 17 in 2010 and to 14 in 2016. Most of these cases were born to women who had not had prenatal care and were first tested at the time of delivery. The Department anticipates that the new rules may impose a minimal-to-moderate cost on a health care provider who is treating a pregnant syphilis case has not already been ordering these tests and provide a significant benefit in reducing the threat of congenital syphilis.

The new rules in R9-6-355, R9-6-359, and R9-6-371 for measles, mumps, and rubella, respectively, contain a requirement for an administrator of a health care institution to exclude a measles case or suspect case from working at the health care institution until specified events occur. If a health care provider is a case or suspect case of one of these diseases, the exclusion would apply to the health care provider. Although not excluded from working, a health care provider identified as the source of hepatitis C virus transmission in the work place could be reassigned under the new rules to a position where the occupational risk of transmission is eliminated. Therefore, the Department believes that, in the unlikely event that a health care provider was a case or suspect case of measles, mumps, or rubella or the source of hepatitis C transmission, the health care provider could incur a

moderate-to-substantial cost due to the rule change, but could receive a significant benefit from not infecting others.

The new rules include in a report required in R9-6-202 a requirement for a health care provider required to report to state whether the diagnosis of tuberculosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory. The Department believes that a health care provider may incur a minimal increased cost from providing this additional information. In R9-6-386, the new rules contain separate methods and criteria by which tuberculosis cases and suspect cases could be removed from isolation precautions. The clarification of the separate criteria and that a suspect case of multi-drug resistant tuberculosis can only be released from isolation precautions by a tuberculosis control officer may provide a significant benefit to a health care provider by making requirements clearer and consistent with standards of care.

- **Health care institutions**

As mentioned above, the Department receives approximately 78,000 reports per year from more than 600 health care institutions, with 176 reporting through MEDSIS, and a range of one to 1,600 reports per year from a reporting entity. Many of the requirements for health care providers are also applicable to the administrators of health care institutions. Therefore, many of the changes made in the new rules would affect both health care providers and health care institutions in a similar manner. A health care institution may also receive a significant benefit from the clarification of the rules. As mentioned above, new communicable diseases are being added to the list in Table 2.1. If an administrator of a health care institution had been reporting these communicable diseases under "Emerging or exotic disease," listing them specifically should clarify that they need to be reported, rather than add to the burden of reporting. Since the incidences of these cases are expected to be very low, an administrator of a health care institution that had not reported cases or suspect cases of these communicable diseases under the current rules may be expected to incur a minimal-to-moderate burden for reporting them. An administrator of a health care institution might also incur minimal additional costs due to the added information being required in a report and from the reduced time to report certain communicable diseases, with some of this cost mitigated through electronic reporting, especially for larger facilities.

Some outbreaks of respiratory disease in a health care institution are already being reported, so the impact of additional reporting is likely to be low. The Department believes that long term care facilities, such as nursing care institutions and assisted living facilities, and other types of residential health care institutions are probably where most of the outbreaks will occur, with hospitals and other acute care settings probably being less impacted. The Department anticipates that reporting outbreaks of respiratory disease in a health care institution may impose a minimal burden on an administrator of

a health care institution and may result in significant cost savings if earlier reporting and institution of appropriate precautions and other responses results in less transmission and fewer cases. Again, these costs for reporting would be expected to be more than offset by removing the requirements for reporting cases or suspect cases of herpes genitalis, aseptic meningitis, enterotoxigenic *Escherichia coli*, Reye syndrome, Kawasaki syndrome, and unexplained death with a history of fever. The Department estimates that removing these reporting requirements may provide a minimal-to-substantial benefit to a health care institution, depending on the number of cases the health care institution encounters.

Case control measures for some communicable diseases also require an administrator of a health care institution to ensure that isolation precautions are instituted to reduce the spread of the communicable disease, and, as mentioned above, these requirements have been added in the new rules for carbapenem-resistant enterobacteriaceae, novel coronavirus, and smallpox. While isolation precautions should already have been occurring as a standard of care, these requirements have been added in the new rules to clarify the need for these precautions. Institution of isolation precautions may provide cost savings by reducing the chance of transmission to other patients/residents and to staff, especially in more residential care settings. Following infection-control guidelines may also reduce the chances that health care institution staff would need to provide prophylactic treatment to patients or residents who were exposed to one of these diseases. Therefore, the Department anticipates that a health care institution may incur minimal-to-moderate costs to institute control measures for these added communicable diseases, but receive minimal-to-substantial benefits from having the control measures in place.

Since Medicare is no longer paying hospitals for the cost of care associated with nosocomial infections, the administrators of hospitals have an additional financial incentive to reduce the spread of health-care-associated infections by complying with contact precautions, exclusion requirements, and notification requirements. The Department believes that the notification required of an administrator of a health care institution transferring an individual known to be infected with resistant agents, specified in the new rules, is already being provided as standard of care and to comply with requirements for transfer in 9 A.A.C. 10. Since patients/residents are frequently transferred both from and into a health care institution, this requirement may affect a health care institution, both as a sending and as a receiving facility, to a greater extent than a health care provider would be affected. As a sending facility, the health care institution could be expected to incur the minimal-to-moderate additional costs for notification, but, as a receiving facility, the health care institution may gain as much as a substantial benefit in knowing immediately what precautions to take with the patient and what treatments may be appropriate. This information is likely to be in the patient's chart but might

not be seen until after there had already been contact with a number of staff during the receiving/admitting process. Thus, the timeliness of knowing a patient is infected contributes greatly to the benefit so appropriate precautions can be implemented to reduce the potential for spread of infection.

The Department believes that the requirement for an administrator of a health care institution to report whether the diagnosis of tuberculosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory may cause the health care institution to incur a minimal increased cost from providing this additional information. The addition in R9-6-386 of separate methods and criteria by which cases and suspect cases of tuberculosis could be removed from isolation precautions and the clarification that a suspect case of multi-drug resistant tuberculosis can only be released from isolation precautions by a tuberculosis control officer may provide a significant benefit to a health care institution by making requirements clearer and consistent with standards of care, but could cause a health care institution to incur moderate additional costs if approval of release from isolation and airborne precautions of a tuberculosis suspect case takes longer than before.

- **Correctional facilities, both public and private**

Many of the changes made in the new rules that affect health care providers and health care institutions also affect correctional facilities in a similar manner. The Department receives approximately 2,900 reports of communicable diseases each year from correctional facilities. A correctional facility may receive a significant benefit from the clarification of the rules. As mentioned above, new communicable diseases are being added to the list in Table 2.1. Although an administrator of a correctional facility may have been reporting these communicable diseases under "Emerging or exotic disease," it is more likely that a prisoner or detainee with one of these diseases would be transferred to a hospital, in which the disease would be diagnosed and from which the case would be reported. Therefore, listing them specifically clarifies that they need to be reported, but is not expected to add to the burden of reporting, especially since the incidences of these cases are expected to be very low. An administrator of a correctional facility may incur up to minimal additional costs due to the added information being required in a report, from the reduced time to report certain communicable diseases, and from the addition of reporting requirements for certain diseases, with some of this cost possibly mitigated through electronic reporting for larger correctional facilities and from no longer having to report cases of "unexplained death with a history of fever." The Department also anticipates that the number of reports of outbreaks of respiratory disease in a correctional facility would be low and impose at most a minimal burden on an administrator of a correctional facility. A correctional facility may also receive a minimal-to-moderate benefit from the earlier detection of cases and the institution of isolation precautions to reduce the number of new cases. As for health care

providers required to report and administrators of health care institutions, these costs for reporting are expected to be more than offset by removing the requirements for reporting cases or suspect cases of other diseases. The Department estimates that these changes may provide a minimal-to-moderate benefit to a correctional facility, depending on the number of cases the correctional facility encounters.

An administrator of a correctional facility is required under the new rules to ensure that control measures recommended by a local health agency or the Department are instituted for some communicable diseases to reduce the spread of the communicable disease both within the correctional facility and to the outside. Following infection-control guidelines may also reduce the chances that correctional facility staff and prisoners or detainees would need to receive prophylactic treatment if exposed to one of these diseases. The recent outbreak of measles in a correctional facility illustrated the importance of these control measures since the correctional facility, local health agencies, and the Department spent over $400,000 to control the outbreak. Requirements have been added in the new rules for an administrator of a correctional facility to institute these recommended control measures for measles, mumps, pertussis, and rubella, since these may be easily transmitted in a residential setting with shared common spaces, as well as for outbreaks of respiratory disease or methicillin-resistant *Staphylococcus aureus*. An administrator of a correctional facility is also required to institute isolation precautions for a carbapenem-resistant enterobacteriaceae case or carrier and to ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested. Therefore, the Department anticipates that a correctional facility may incur minimal-to-moderate costs to institute control measures for these added communicable diseases, but receive minimal-to-substantial benefits from having the control measures in place and reducing the chance of an outbreak occurring.

As mentioned above, a diagnosing health care provider or an administrator of a health care institution transferring a patient known to be infected with resistant agents, specified in the new rules, is required to notify the facility to which the patient is being transferred of the resistant organism so the receiving facility would know what precautions to take to reduce the chance of transmission, as well as how to provide treatment to the patient. An individual is more likely to be diagnosed with a multi-drug resistant organism, carbapenem-resistant enterobacteriaceae, *Clostridium difficile*, or methicillin-resistant *Staphylococcus aureus* at a health care institution than in a correctional facility. Therefore, a correctional facility may receive a moderate-to-substantial benefit from notification by a health care provider or health care institution of a prisoner's or detainee's diagnosis with one of these conditions so precautions can be taken to prevent transmission. An administrator of a correctional facility is also required to notify a facility to which a prisoner or detainee known to be infected with a

resistant agent is being transferred. Therefore, a correctional facility may also incur minimal costs for providing this notification.

According to the CDC, incarcerated individuals are at greater risk for becoming infected with tuberculosis than the general population since they live in closer proximity to other individuals than the general public and between 4 and 6% of tuberculosis cases are incarcerated at the time of diagnosis. In Arizona, due to the close coordination between the Department and correctional facilities, approximately 25% of tuberculosis cases in Arizona in 2016 were diagnosed while the case was incarcerated. The Department believes that the changes in the reporting requirements and requirements related to removal from isolation precautions for tuberculosis may cause a correctional facility to incur a minimal increased cost from providing the additional information and to receive a minimal-to-substantial benefit from the changes related to removal from isolation precautions.

- **Public and private schools, child care establishments, and shelters**

The Department receives approximately 100 reports of communicable diseases each year under R9-6-203 and Table 2.2 through local health agencies from reporting entities identified as schools, child care establishments, and shelters. The Department believes this is an underestimate, though, and estimates that there are more than 300 school reports per year. The new rules clarify reporting requirements for schools, child care establishments, and shelters to make them easier to understand. The new rules also clarify that reports are submitted in a Department-provided format; correct cross references; add a requirement for the name and contact information for a parent or guardian of a child with a disease, infestation, or symptoms; and add that an e-mail address may be reported, as well as a telephone number, for the individual making the report. The Department believes that these changes may cause a school, child care establishment, or shelter to incur minimal additional costs for the added information and provide a significant benefit from clarity and the reduced time spent finding and giving the additional information to a local health agency once it is requested separately from the report.

The new rules contain additional case control measures for shelters. As for correctional facilities, requirements have been added in the new rules for an administrator of a shelter to comply with control measures recommended by a local health agency or the Department for measles, mumps, pertussis, and rubella. These control measures are intended to prevent or control the spread of an outbreak of these highly contagious diseases in settings that may be at higher risk due to shared living spaces, inadequate immunization rates, or transient residents. The Department anticipates that a shelter could incur minimal-to-moderate costs for implementing these recommendations but receive a significant benefit from not having a case of one of these communicable diseases infect other individuals on the premises.

- **Clinical laboratories (laboratories)**

Communicable disease reporting from clinical laboratories is submitted directly to the Department. The new rules clarify reporting requirements, including the information required for a specimen for which an immediate report is required and for reference ranges, corrects cross references, and add that an e-mail address may be reported. A clinical laboratory may receive a significant benefit from the clarification of the rules. As mentioned above, 10 communicable diseases are being added as laboratory reportable, which may not affect the number of tests performed (since the tests are generally performed based on a health care provider's order, independent on whether the result is reportable or not), but may result in over 800 more required reports. However, at least two of the largest clinical laboratories have already voluntarily reported carbapenem-resistant enterobacteriaceae and *Rickettsia* spp., the organisms causing the majority of reports, so the Department anticipates a minimal increase in the number of reports due to the addition of these communicable diseases. Animal rabies is also already being reported and specimens sent to the Arizona State Laboratory, which is the only facility in Arizona that can test for rabies following a possible exposure of a human or pet. The reporting of positive test results of vancomycin-resistant *Staphylococcus epidermidis* will no longer be required under the new rules, but may not result in a benefit since no positive results have been received since reporting was required. The Department believes that, because the communicable diseases being added are already being reported or are rare, these changes will result in at most a moderate cost to a clinical laboratory.

Currently, only positive test results for HIV are required to be reported, except for infants, for whom all test results are reportable. The new rules expand the existing reporting requirements for HIV to include the viral load and CD4 count values for all HIV-related tests, except negative screening tests. Because clinical laboratories already report virtually all viral load and CD4 count values (over 155,000 per year), to conform to reporting requirements in other states, few, if any, additional reports are expected to be submitted. The vast majority of these test results are "negative" (undetectable) for HIV and would, therefore, not be counted as HIV case reports. Therefore, the Department believes that these changes will result in a significant benefit to a clinical laboratory through more consistent reporting requirements, and may result in at most a moderate cost to a clinical laboratory that had not been reporting viral load and CD4 count values for all HIV-related tests.

The time periods for reporting several communicable diseases are being changed in the new rules. For nine, the five-day time period for reporting is too long to allow for a timely public health response and is being decreased to one day after a positive test result. For four others, the time period is being increased from 24 hours after a positive test result to one working day, which is sufficient for

a public health response. Currently, approximately 76% of reports by clinical laboratories occur within one working day, regardless of the time allowed for reporting, with an overall average of 1.7 days from result to report. Shorter reporting times are largely due to the use of electronic reporting, which was not in place in 2008 when the current rules were adopted. Electronic reports are received on average within one day of results while non-electronic reports are received on average 1.7 days after results for communicable diseases with a 24 hour/one-day report time period and 3.1 days for communicable diseases with a five-day report time period. For clinical laboratories already reporting according to the time periods in the new rules, the Department anticipates there will be no effect from the rules changes. For clinical laboratories not reporting according to the time periods in the new rules, the Department believes a clinical laboratory may incur up to moderate costs to send the report out more quickly, depending on the number of reports, and may receive a significant benefit if the new rules encourage electronic reporting.

Because many testing methodologies in clinical laboratories no longer require a clinical laboratory to obtain an isolate from a specimen as part of the confirmation of a communicable disease, the new rules specify that, for the agents for which an isolate or a specimen is required, a clinical laboratory is required to submit to the Arizona State Laboratory an isolate of the organism for each positive culture, if available, or a specimen for each positive test result. This change reflects current practice since a clinical laboratory is unlikely to produce an isolate specifically for submission to the Department when the diagnostic testing method used did not require an isolate. The Department anticipates another cost savings to clinical laboratories from a change making the submission of an isolate or specimen to be by request only for five communicable diseases for which an isolate or specimen was required under the current rules. The Department anticipates that more than 1,200 fewer isolates/specimens may be submitted because of this rules change. To enable the Department to characterize an agent and establish relationships between cases of a disease, while not placing an undue burden on clinical laboratories, a clinical laboratory will only be required to submit an isolate or specimen if requested by the Department for 10 other communicable diseases for which neither an isolate or a specimen was required under the current rules. The Department anticipates that more than 500 fewer isolates/specimens may be submitted because of this rules change. For some rare diseases, clinical laboratories do not have the ability to confirm a diagnosis. Therefore, it is critical for the Department to be able to assist in diagnosis for these communicable diseases, which include rabies in a human, smallpox, viral hemorrhagic fever, yellow fever virus infection, and Zika virus infection. An isolate or a specimen is being required for each positive test result for these diseases; fewer than five cases other than Zika virus infections are expected to be reported, and the Department is already receiving specimens for Zika virus infections. The Department believes that these changes

may result in a significant benefit to a clinical laboratory from sending fewer specimens/isolates and may cause the clinical laboratory to incur at most minimal additional costs from sending specimens for other communicable diseases, which may be further reduced by the clinical laboratory using the courier service provided by the Arizona State Laboratory since 2014.

One of the agents for which an isolate or a specimen may be requested is *Neisseria gonorrhoeae*, the agent causing gonorrhea. This agent has been characterized by the CDC as an "Urgent Threat" to public health due to emerging multi-drug resistance that makes the disease difficult to treat. To determine the best course of treatment for a patient, a health care provider may request a clinical laboratory to determine the drug sensitivity pattern of the agent for a specimen testing positive for gonorrhea. The new rules require a clinical laboratory to report the drug sensitivity pattern for any specimen of *Neisseria gonorrhoeae* for which a drug sensitivity pattern was determined to enable the Department to monitor drug resistance in Arizona. The Department expects this change to cause at most a moderate cost increase to clinical laboratories, depending on the number of reports including a drug sensitivity pattern.

- **Businesses employing individuals infected with a communicable disease, including owners or operators of restaurants or other food establishments**

To reduce disease transmission and the risk of an outbreak of a communicable disease, especially in vulnerable populations, cases or suspect cases of certain communicable diseases who work in sensitive occupations are excluded from working until specific criteria are met. The most common of these sensitive occupations include working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment, and are included in the rules. Owners or operators of businesses employing individuals with a communicable disease may be affected by the rule changes related to exclusion. During 2014 to 2016, the average number of cases or suspect cases, 18 years of age or older, of a communicable disease with exclusion as a possible control measure was 2, 443. The Department estimates that approximately 5% (122) of these individuals worked in a sensitive occupation and were subject to exclusion.

The new rules clarify that for amebiasis, campylobacteriosis, giardiasis, *Vibrio* infection, and yersiniosis, only a case or suspect case with diarrhea is required to be excluded from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment, rather than all cases or suspect cases, making the exclusion criteria less stringent. Exclusion criteria are added for a case or suspect case of hepatitis E, as well as a case that is part of a norovirus outbreak or an outbreak of diarrhea, nausea, or vomiting. Exclusion criteria are also added for a case or suspect case of measles, mumps, or rubella working in a health

care institution and for suspect cases of salmonellosis, shigellosis, or typhoid. Exclusion criteria are removed for a case or suspect case of hemolytic uremic syndrome, as well as for contacts of individuals infected with Shiga-toxin producing *Escherichia coli*, giardiasis, salmonellosis, or shigellosis. The new R9-6-304 clarifies that the Department may order exclusion of an individual working as a food handler. The length of exclusion may be as little as one day or as long as several months, depending on the communicable disease.

Since local health agencies play a major role in determining who will be excluded and for how long, the decisions made by local health agencies may affect the businesses employing an excluded individual. The new rules allow a local health agency to determine that a case or suspect case with certain diseases in a sensitive occupation may return to work and do not allow the option of removal of the exclusion from working in sensitive occupations for a giardiasis case with negative stool specimens until cleared by a local health agency. These changes may allow an infected individual to be removed from isolation or exclusion earlier than otherwise or be excluded longer to protect public health. The new rules also provide additional control measures that a local health agency may use to reduce the threat of the spread of a communicable disease.

The Department anticipates that changes related to exclusion criteria may result in a minimal-to-moderate cost on an owner or operator of a business that employs a case, suspect case, or contact of one of these diseases due to more stringent exclusion criteria for the disease and may provide a minimal-to-moderate benefit by making the exclusion criteria for other diseases less stringent and from the potential reduction in the number of new cases or an outbreak arising from an infected worker employed at the business. The new criteria may also reduce the likelihood of the business incurring direct or indirect costs as a result of being identified as the source, or continued source, of an outbreak. The environmental control and health education requirements added in the new rules may also provide a significant benefit to a business employing an individual infected with a communicable disease if an environmental assessment includes the business as a possible source of infection and any issues are identified so the owner or operator of the business can take steps to resolve the issues.

- **Owners or operators of aquatic venues**

Since the current rules were adopted, new types of aquatic venues, such as splash pads, have begun operating, and the number of recreational water-related outbreaks of communicable diseases has increased. Although all types of aquatic venues are susceptible to contamination and to the spread of water-borne diseases, splash pads are especially vulnerable because the water may be less heavily treated with antimicrobial agents, and there is less water to wash away contaminated material. In the past few years, there have been fewer than 5 instances per year in Arizona where an aquatic venue

was shut down due to contamination with a communicable disease until the threat to public health was resolved. The new rules add an exclusion from an individual using an aquatic venue for specific periods after diarrhea has resolved for certain water-borne diseases, including amebiasis, cholera, cryptosporidiosis, giardiasis, salmonellosis, shigellosis, and yersiniosis. The Department believes that an owner or operator of an aquatic venue may incur minimal decreased revenue from fewer individuals with one of these diseases using the aquatic venue during the time period specified in rule for exclusion and may receive up to a substantial benefit from not having the aquatic venue contaminated, needing to take measures to disinfect the venue, and having to shut down operations until the area is no longer contaminated.

- **Pharmacists and pharmacies**

  In 2016, the Department received over 10,600 reports from pharmacists or administrators of pharmacies under R9-6-205 to assist in the detection of cases of tuberculosis. The Department reviews these reports to determine which relate to the same individual and whether the individual is already identified as a tuberculosis case. The new rules clarify reporting requirements for pharmacists and administrators of pharmacies to make them easier to understand. The new rules also clarify that reports are submitted in a Department-provided format. The Department believes that a pharmacist or administrator of a pharmacy may receive a significant benefit from the new rules.

- **Health insurance companies and health plans, including AHCCCS**

  As mentioned above, the new rules require a sending facility (health care institution or correctional facility) or health care provider to notify a receiving facility or health care provider before transferring an individual infected with one of certain communicable diseases, as specified in rule. This notification is required for multi-drug-resistant organisms under R9-6-305, as well as carbapenem-resistant enterobacteriaceae, *Clostridium difficile*, methicillin-resistant *Staphylococcus aureus* (MRSA), and vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*. These diseases are considered by the CDC to be threats to public health because their resistance to antibiotics makes them difficult to treat. An individual infected with one of these agents may need to be hospitalized for an extended period and receive very expensive medication regimens to try to clear the infection. Based on 2012 data from several Arizona hospitals for carbapenem-resistant enterobacteriaceae only, each hospital had approximately six cases in a year. The median hospitalization charges for each case were almost $75,000, with 50% of cases admitted to the intensive care unit and 19% resulting in death.

  If a health care provider, health care institution, or correctional facility is made aware that an individual is infected with one of these agents, the health care provider, health care institution, or correctional facility not only knows how to provide treatment for the individual and what precautions

the health care provider, health care institution, or correctional facility can take to reduce the spread of the agent to other individuals, but can also take those steps in a more timely manner before the patient has contact with more staff and other patients. The Department anticipates that a health insurance company or health plan, including AHCCCS or Medicare, may receive up to a substantial benefit from the rule change requiring notification through the reduction in the number of new cases for which the health insurance company or health plan would be required to pay for care.

The transmission of syphilis across the placenta can occur at any time during a pregnancy, leading to congenital syphilis in the fetus or newborn. As mentioned above the cost for care for one case of congenital syphilis may approach $2 million dollars over the lifetime of a child. Although not all of these costs would be covered under health insurance, the Department believes that a proportion would be. Therefore, changes being made to the new rules may reduce the number of cases of congenital syphilis and the resulting costs to a health insurance company or health plan. While a health insurance company or health plan may incur up to substantial costs for the additional tests for pregnant women covered by the health insurance company or health plan, their cost savings could be substantial if even one case of congenital syphilis were avoided.

- **Cases or suspect cases of a communicable disease**

The Department expects individuals infected with a communicable disease to receive a significant benefit from the clarification of reporting requirements and control measures for communicable diseases. The new rules should make it easier for health care providers and other reporting entities to report and for entities responsible for control activities to comply with control measures for communicable diseases. Since many of the reportable communicable diseases are rare, the sooner a disease is reported by a reporting entity to a local health agency or the Department, the faster individuals with expertise in the disease will be able to provide assistance to the individual or the individual's health care provider, if appropriate. Therefore, the reduced time to report for some of the reportable communicable diseases should provide a significant benefit to a case or suspect case.

The new rules also add requirements for notification when an individual infected with certain diseases is transferred. This change may provide a significant benefit to an individual infected with one of these diseases since the receiving health care provider, health care institution, or correctional facility may be able to provide better care to the individual. The environmental control and health education requirements added in the new rules may provide a significant indirect benefit to a case or suspect case by helping to protect the family members of the case or suspect case from becoming infected.

In R9-6-303, the new rules provide additional control measures that a local health agency may use to reduce the threat of the spread of a communicable disease. These include measures that may

reduce the time of or avoid the need for isolation or exclusion in some instances, providing a significant benefit to an individual who would otherwise have been isolated or excluded. The new rules also allow local health agencies to determine when a case or suspect case may be removed from exclusion. This change may provide a significant benefit to an infected individual who may be removed from isolation or exclusion earlier and may impose a significant cost on an individual who is excluded longer to protect public health.

The new rules also provide for testing methods other than culture to demonstrate that an individual is not infectious and allow local health agencies to remove an individual from exclusion if the local agency believes the individual is not likely to spread the disease. The new rules also require a suspect case of multi-drug resistant tuberculosis to be approved for release from isolation and air-borne precautions by a tuberculosis control officer, as well as for exclusion from working for a suspect case of salmonellosis or shigellosis. The new rules also require a case or suspect case of measles, mumps, or rubella to be excluded from working in a health care institution until certain criteria are met. The Department anticipates that these changes may provide a significant benefit to a case or suspect case who is removed from isolation earlier than the individual would have been under the current rules, and a significant cost if a case or suspect case were not removed from isolation or exclusion as quickly as under the current rules.

If not adequately treated, a syphilis infection may remain in the body for years without causing symptoms and may travel to the brain or optic nerve, causing irreversible neural damage including blindness or dementia. A syphilis case who is pregnant may transmit the disease to the fetus, leading to congenital syphilis. The Department anticipates that allowing a local health agency to recommend more frequent testing for syphilis, or testing for a longer time period, may reduce the chance that a syphilis case would continue to be infected and may detect reinfection. Because of the severe consequences of undetected or untreated/inadequately treated syphilis, the Department believes this rule change could provide a significant benefit to a syphilis case. A syphilis case may incur up to a minimal additional cost for more frequent testing for syphilis or testing for a longer time period.

- **Contacts of individuals infected with a communicable disease**

The new rules make several changes that affect contacts. The new rules remove contact control measures for Shiga-toxin producing *Escherichia coli*, giardiasis, salmonellosis, and shigellosis because a contact with symptoms would be a suspect case. The new rules also allow a local health agency to determine which contacts of a measles, mumps, novel coronavirus, pertussis, or rubella case to quarantine or exclude, providing more flexibility in determining risk. Finally, the new rules require the administrator of a school or child care establishment that excludes a pediculosis case from the school or child care establishment to ensure that a parent or guardian of a child who is a contact is

notified that a pediculosis case was identified at the school or child care establishment. The Department anticipates that these changes may provide a significant benefit to a contact of an individual infected with a communicable disease.

The Department believes that allowing a local health agency to recommend more frequent testing for syphilis, or testing for a longer time period, may reduce the number of infectious cases of syphilis than would otherwise occur, either through continued infection or reinfection, and may reduce the chance of a syphilis case transmitting the disease to a contact. In addition, since approximately 90% of syphilis cases are male, reducing the number of syphilis cases may reduce the chance that a female sexual partner of a case would be exposed, contract the disease, and transmit the disease to an unborn child. Therefore, the Department anticipates that these changes may provide a significant benefit to a contact of syphilis case.

To ensure public health and safety, contacts of a case or suspect case of a communicable disease are sometimes quarantined or excluded until the contact is known not to be infected. The new rules in R9-6-303, described above, may have a larger impact on a contact of an infected individual since they provide additional control measures that a local health agency may use to reduce the threat of the spread of a communicable disease other than quarantine, and may provide a significant benefit to a contact who would otherwise have been quarantined or excluded. Requirements for environmental control measures and health education may also provide a significant benefit to the household or neighborhood contacts of an infected individual by identifying potential sources of infection and thereby reducing the risk of infection to the contacts. Notification before transfer of an individual infected with one of certain communicable diseases may also provide a significant benefit to staff of a receiving health care provider, health care institution, or correctional facility who assist in admitting or providing services to a case, because a staff member would have timely information that precautions should be taken to protect the staff member from exposure and, thus, becoming a contact. Other patients or residents in a health care institution and other prisoners or detainees in a correctional facility to which a case is transferred may or may not be considered contacts and are discussed below.

- **Other patients or residents in a health care institution or other prisoners or detainees in a correctional facility to which a case is transferred**

As mentioned above, the requirement for a diagnosing health care provider or an administrator of a health care institution or correctional facility to notify a receiving facility or health care provider before transferring an individual infected with one of certain communicable diseases may allow the receiving facility or health care provider to institute precautions to reduce the risk of spreading the disease. A patient or resident in a health care institution or prisoner or detainee in a correctional facility to which a case with one of these communicable diseases is transferred may receive a

significant benefit from the rule change requiring notification through the reduction in the risk of becoming a contact or new case.

- **General public**

  The general public may receive a significant benefit from the clarity of the new rules and the ease with which they may be followed. The improved clarity of the rules and educational activities by the Department about the new rules may increase the awareness of health care providers (and in turn their patients) about communicable diseases and methods to avoid becoming infected. Changes to the reporting requirements and control measures may improve the health of individuals and their families. If fewer individuals become infected with one of these diseases, they and their families will lose fewer days of work or school due to illness or exclusion. The Department also anticipates lower costs to the public related to the results of untreated disease. In a more global sense, earlier detection of cases or outbreaks made possible by the new rules should lead to quicker response times and less disease transmission, as will changes to control measures, such as education, vector control, environmental measures, exclusions, and isolation, established to prevent additional cases. Reduced transmission leads to less risk to others, which may provide a significant benefit to society in general.

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

Public and private employment in the State of Arizona is not expected to be affected due to the changes required in the rule.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

Small businesses subject to the rules may include the practices of health care providers, small health care institutions, small clinical laboratories, pharmacies, schools, shelters, and child care establishments.

b. The administrative and other costs required for compliance with the rules

Anticipated costs for complying with the rules are described under paragraph 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses

The methods that the Department uses to reduce the impact on small businesses are described under paragraph 3 and include improving the clarity of the rules to reduce confusion, tailoring the reporting method to the type of reporting entity and the volume of reports, requiring the submission by a clinical laboratory of an isolate or specimen by

request only for certain diseases, and providing more flexibility in removal from exclusion from working.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The costs to private persons and consumers from the rules changes are described in paragraph 3.

6. A statement of the probable effect on state revenues

The Department does not anticipate any effect on state revenue on the basis of this rulemaking.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data

Not applicable

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING

ARTICLE 2. COMMUNICABLE DISEASE AND INFESTATION REPORTING

R9-6-201. Definitions

In this Article, unless otherwise specified:

1. "Clinical laboratory" has the same meaning as in A.R.S. § 36-451.
2. "Drug" has the same meaning as in A.R.S. § 32-1901.
3. "Epidemiologic curve" means a graphic display of the number of cases over time.
4. "Normally sterile site" means an anatomic location, or tissue or body fluid from an anatomic location, in which microorganisms are not found in the absence of disease and includes:
    a. The lower respiratory tract;
    b. Blood;
    c. Bone marrow;
    d. Cerebrospinal fluid;
    e. Pleural fluid;
    f. Peritoneal fluid;
    g. Synovial fluid;
    h. Pericardial fluid;
    i. Amniotic fluid;
    j. Lymph;
    k. A closed abscess; or
    l. Another anatomic location other than the skin, mouth, eyes, upper respiratory tract, middle ear, urogenital tract, or gastrointestinal tract.
5. "Health care provider required to report" means a physician, physician assistant, registered nurse practitioner, or dentist who diagnoses, treats, or detects a case or suspect case of a communicable disease listed in Table 2.1 or detects an occurrence listed in Table 2.1.
6. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
7. "Point of contact" means an individual through whom the Department or a local health agency can obtain information upon request.
8. "Whole blood" means human blood from which plasma, erythrocytes, leukocytes, and thrombocytes have not been separated.

R9-6-202. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility

A. A health care provider required to report shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.1 and as specified in subsection (C) or (D).

B. An administrator of a health care institution or correctional facility in which a case or suspect case of a communicable disease listed in Table 2.1 is diagnosed, treated, or detected or an occurrence listed in Table 2.1 is detected shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.1 and as specified in subsection (C) or (D).

C. Except as described in subsection (D), for each case, suspect case, or occurrence for which a report on an individual is required by subsection (A) or (B) and Table 2.1, a health care provider required to report or an administrator of a health care institution or correctional facility shall submit a report that includes:

1. The following information about the case or suspect case:
    a. Name;
    b. Residential and mailing addresses;
    c. County of residence;
    d. Whether the individual is living on a reservation and, if so, the name of the reservation;
    e. Whether the individual is a member of a tribe and, if so, the name of the tribe;
    f. Telephone number and, if available, email address;
    g. Date of birth;
    h. Race and ethnicity;
    i. Gender;
    j. If known, whether the individual is pregnant;
    k. If known, whether the individual is alive or dead;
    l. If known, the individual's occupation;
    m. If the individual is attending or working in a school or child care establishment or working in a health care institution or food establishment, the name and address of the school, child care establishment, health care institution, or food establishment; and
    n. For a case or suspect case who is a child requiring parental consent for treatment, the name, residential address, telephone number, and, if available, email address of the child's parent or guardian, if known;
2. The following information about the disease:

a. The name of the disease;
b. The date of onset of symptoms;
c. The date of diagnosis;
d. The date of specimen collection;
e. Each type of specimen collected;
f. Each type of laboratory test completed;
g. The date of the result of each laboratory test; and
h. A description of the laboratory test results, including quantitative values if available;

3. If reporting a case or suspect case of tuberculosis:
    a. The site of infection;
    b. A description of the treatment prescribed, if any, including:
        i. The name of each drug prescribed,
        ii. The dosage prescribed for each drug, and
        iii. The date of prescription for each drug; and
    c. Whether the diagnosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory;
4. If reporting a case or suspect case of chancroid, gonorrhea, or *Chlamydia trachomatis* infection:
    a. The gender of the individuals with whom the case or suspect case had sexual contact;
    b. A description of the treatment prescribed, if any, including:
        i. The name of each drug prescribed,
        ii. The dosage prescribed for each drug, and
        iii. The date of prescription for each drug;
    c. The site of infection; and
    d. Whether the diagnosis was confirmed by a laboratory and, if so, the name, address, and phone number of the laboratory;
5. If reporting a case or suspect case of syphilis:
    a. The information required under subsection (C)(4); and
    b. Identification of:
        i. The stage of the disease, or
        ii. Whether the syphilis is congenital;
6. If reporting a case of congenital syphilis in an infant, and in addition to the information required under subsection (C)(5) and A.R.S. § 36-694(A), the following information:
    a. The name and date of birth of the infant's mother;

b. The residential address, mailing address, telephone number, and, if available, email address of the infant's mother;

c. The date and test results for the infant's mother of the prenatal syphilis test required in A.R.S. § 36-693; and

d. If the prenatal syphilis test of the infant's mother indicated that the infant's mother was infected with syphilis:

i. Whether the infant's mother received treatment for syphilis,

ii. The name and dosage of each drug prescribed to the infant's mother for treatment of syphilis and the date each drug was prescribed, and

iii. The name and phone number of the health care provider required to report who treated the infant's mother for syphilis;

7. The name, address, telephone number, and, if available, email address of the individual making the report; and

8. The name, address, telephone number, and, if available, email address of the:

a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection (C)(7); or

b. Health care institution or correctional facility, if reporting under subsection (B).

D. For each outbreak for which a report is required by subsection (A) or (B) and Table 2.1, a health care provider required to report or an administrator of a health care institution or correctional facility shall submit a report that includes:

1. A description of the signs and symptoms;

2. If possible, a diagnosis and identification of suspected sources;

3. The number of known cases and suspect cases;

4. A description of the location and setting of the outbreak;

5. The name, address, telephone number, and, if available, email address of the individual making the report; and

6. The name, address, telephone number, and, if available, email address of the:

a. Health care provider, if reporting under subsection (A) and different from the individual specified in subsection (D)(5); or

b. Health care institution or correctional facility, if reporting under subsection (B).

E. When an HIV-related test is ordered for an infant who was perinatally exposed to HIV to determine whether the infant is infected with HIV, the health care provider who orders the HIV-related test or the administrator of the health care institution in which the HIV-related test is ordered shall:

1. Report the results of the infant's HIV-related test to the Department, either personally or through a representative, within five working days after receiving the results of the HIV-related test;
2. Include the following information in the report specified in subsection (E)(1):
    a. The name and date of birth of the infant;
    b. The residential address, mailing address, and telephone number of the infant;
    c. The name and date of birth of the infant's mother;
    d. The date of the last medical evaluation of the infant;
    e. The types of HIV-related tests ordered for the infant;
    f. The dates of the infant's HIV-related tests;
    g. The results of the infant's HIV-related tests; and
    h. The ordering health care provider's name, address, and telephone number; and
3. Include with the report specified in subsection (E)(1) a report for the infant's mother including the following information:
    a. The name and date of birth of the infant's mother;
    b. The residential address, mailing address, and telephone number of the infant's mother;
    c. The date of the last medical evaluation of the infant's mother;
    d. The types of HIV-related tests ordered for the infant's mother;
    e. The dates of the HIV-related tests for the infant's mother;
    f. The results of the HIV-related tests for the infant's mother;
    g. What HIV-related risk factors the infant's mother has;
    h. Whether the infant's mother delivered the infant vaginally or by C-section;
    i. Whether the infant's mother was receiving HIV-related drugs prior to the infant's birth to reduce the risk of perinatal transmission of HIV; and
    j. The name, address, and telephone number of the health care provider who ordered the HIV-related tests for the infant's mother.

Table 2.1. Reporting Requirements for a Health Care Provider Required to Report or an Administrator of a Health Care Institution or Correctional Facility

+*,O	Amebiasis	(	Glanders	O	Respiratory disease in a health care institution or correctional facility
+	Anaplasmosis	+	Gonorrhea	)*	Rubella (German measles)
(	Anthrax	)	*Haemophilus influenza*, invasive disease	)	Rubella syndrome, congenital
+	Arboviral infection	+	Hansen's disease (Leprosy)	)*,O	Salmonellosis
+	Babesiosis	)	Hantavirus infection	O	Scabies
+	Basidiobolomycosis	)	Hemolytic uremic syndrome	)*,O	Shigellosis
(	Botulism	)*,O	Hepatitis A	(	Smallpox
)	Brucellosis	+	Hepatitis B and Hepatitis D	)	Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever)
+*,O	Campylobacteriosis	+	Hepatitis C	+	Streptococcal group A infection, invasive disease
+	Chagas infection and related disease (American trypanosomiasis)	+*,O	Hepatitis E	+	Streptococcal group B infection in an infant younger than 90 days of age, invasive disease
+	Chancroid	+	HIV infection and related disease	+	*Streptococcus pneumoniae* infection (pneumococcal invasive disease)
)	Chikungunya	)	Influenza-associated mortality in a child	+[1]	Syphilis
+	*Chlamydia trachomatis* infection	)	Legionellosis (Legionnaires' disease)	+*,O	Taeniasis
)*	Cholera	)	Leptospirosis	+	Tetanus
+	Coccidioidomycosis (Valley Fever)	)	Listeriosis	+	Toxic shock syndrome
+	Colorado tick fever	+	Lyme disease	)	Trichinosis
O	Conjunctivitis, acute	)	Lymphocytic choriomeningitis	)	Tuberculosis, active disease
+	Creutzfeldt-Jakob disease	+	Malaria	)	Tuberculosis latent infection in a child 5 years of age or younger (positive screening test result)
)*,O	Cryptosporidiosis	(	Measles (rubeola)	(	Tularemia
)	*Cyclospora* infection	)	Melioidosis	)	Typhoid fever
+	Cysticercosis	(	Meningococcal invasive disease	)	Typhus fever
)	Dengue	)	Mumps	)	Vaccinia-related adverse event

O	Diarrhea, nausea, or vomiting	(	Novel coronavirus infection (e.g., SARS or MERS)	(	Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus*
(	Diphtheria	)	Pertussis (whooping cough)	+	Varicella (chickenpox)
+	Ehrlichiosis	(	Plague	)*,O	*Vibrio* infection
(	Emerging or exotic disease	(	Poliomyelitis (paralytic or non-paralytic)	(	Viral hemorrhagic fever
(	Encephalitis, parasitic	+	Psittacosis (ornithosis)	+	West Nile virus infection
)	Encephalitis, viral	)	Q fever	(	Yellow fever
)	*Escherichia coli*, Shiga toxin-producing	(	Rabies in a human	)*,O	Yersiniosis (enteropathogenic *Yersinia*)
+*,O	Giardiasis	)	Relapsing fever (borreliosis)	)	Zika virus infection

Key:

(Submit a report by telephone or through an electronic reporting system authorized by the Department within 24 hours after a case or suspect case is diagnosed, treated, or detected, or an occurrence is detected.

* Submit a report within 24 hours after a case or suspect case is diagnosed, treated, or detected, instead of reporting within the general reporting deadline, if the case or suspect case is a food handler or works in a child care establishment or a health care institution.

1 Submit a report within one working day if the case or suspect case is a pregnant woman.

) Submit a report within one working day after a case or suspect case is diagnosed, treated, or detected.

+ Submit a report within five working days after a case or suspect case is diagnosed, treated, or detected.

O Submit a report within 24 hours after detecting an outbreak.

R9-6-203. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter

A. An administrator of a school, child care establishment, or shelter shall, either personally or through a representative, submit a report, in a Department-provided format, to the local health agency within the time limitation in Table 2.2 and as specified in subsection (B).

B. For each individual with a disease, infestation, or symptoms of a communicable disease or infestation listed in Table 2.2, or an outbreak of the communicable disease or infestation, an administrator of a school, child care establishment, or shelter shall submit a report that includes:

1. The name and address of the school, child care establishment, or shelter;
2. The number of individuals with the disease, infestation, or symptoms;
3. The date and time that the disease or infestation was detected or that the symptoms began;
4. The number of rooms, grades, or classes affected and the name of each;
5. The following information about each individual with the disease, infestation, or symptoms:
    a. Name;
    b. Date of birth or age;
    c. If the individual is a child, name and contact information for the individual's parent or guardian;
    d. Residential address and telephone number; and
    e. Whether the individual is a staff member, a student, a child in care, or a resident;
6. The number of individuals attending or residing at the school, child care establishment, or shelter; and
7. The name, address, telephone number, and, if available, email address of the individual making the report.

Table 2.2. Reporting Requirements for an Administrator of a School, Child Care Establishment, or Shelter

+	Campylobacteriosis	(	Mumps
O	Conjunctivitis, acute	(	Pertussis (whooping cough)
(	Cryptosporidiosis	(	Rubella (German measles)
O	Diarrhea, nausea, or vomiting	(	Salmonellosis
(	*Escherichia coli*, Shiga toxin-producing	O	Scabies
(	*Haemophilus influenzae*, invasive disease	(	Shigellosis
(	Hepatitis A	O	Streptococcal group A infection
(	Measles	+	Varicella (chickenpox)
(	Meningococcal invasive disease		

Key:
(Submit a report within 24 hours after detecting a case or suspect case.
+ Submit a report within five working days after detecting a case or suspect case.
O Submit a report within 24 hours after detecting an outbreak.

R9-6-204. Clinical Laboratory Director Reporting Requirements

A. Except as specified in subsection (D), a director of a clinical laboratory that obtains a test result described in Table 2.3 or that receives a specimen for detection of an infectious agent or toxin listed in Table 2.3 shall, either personally or through a representative, submit a report, in a Department-provided format, and, if applicable, an isolate or a specimen to the Department within the time limitation and as specified in Table 2.3 and subsection (B) or (C).

B. For each specimen for which an immediate report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:

1. The name and address of the laboratory;
2. The name and telephone number of the director of the clinical laboratory;
3. The name and, as available, the address, telephone number, and email address of the subject;
4. The date of birth of the subject;
5. The gender of the subject;
6. The laboratory identification number;
7. The specimen type;
8. The date of collection of the specimen;
9. The type of test ordered on the specimen; and
10. The ordering health care provider's name, address, telephone number, and, if available, email address.

C. Except as provided in Table 2.3 and as specified in subsection (D), for each test result for a subject for which a report is required by subsection (A) and Table 2.3, a clinical laboratory director shall ensure the report includes:

1. The name and address of the laboratory;
2. The name and telephone number of the director of the clinical laboratory;
3. The name and, as available, the address, telephone number, and email address of the subject;
4. The date of birth of the subject;
5. The gender of the subject;
6. The laboratory identification number;
7. The specimen type;
8. The date of collection of the specimen;

9. The date of the result of the test;
10. The type of test completed on the specimen;
11. The test result, including quantitative values and reference ranges, if applicable; and
12. The ordering health care provider's name, address, telephone number, and, if available, email address.

D. When the Arizona State Laboratory obtains a test result from anonymous HIV testing sent to the Arizona State Laboratory as described in R9-6-1005, the director of the Arizona State Laboratory shall, either personally or through a representative:

1. Submit a report to the Department within five working days after obtaining a positive test result; and
2. Include in the report the following information:
    a. The laboratory identification number of the subject;
    b. The date of birth, gender, race, and ethnicity of the subject;
    c. The date the specimen was collected;
    d. The type of tests completed on the specimen;
    e. The test results, including quantitative values if available; and
    f. The name, address, and telephone number of the person who submitted the specimen to the Arizona State Laboratory.

Table 2.3. Clinical Laboratory Director Reporting Requirements

+	*Anaplasma* spp.	%,),ã	*Francisella tularensis*	+	*Plasmodium* spp.
),ã[4]	Arboviruses	),ã[4,5]	*Haemophilus influenzae*, from a normally sterile site	),ã	Rabies virus from a human
+	*Babesia* spp.	)	Hantavirus	),ã[4]	Rabies virus from an animal
%,(,ã	*Bacillus anthracis*	)[1]	Hepatitis A virus (anti-HAV-IgM serologies, detection of viral nucleic acid, or genetic sequencing)	+	Respiratory syncytial virus
),ã[4]	*Bordetella pertussis*	+[1]	Hepatitis B virus (anti-Hepatitis B core-IgM serologies, Hepatitis B surface or envelope antigen serologies, detection of viral nucleic acid, or genetic sequencing)	),ã[4]	*Rickettsia* spp. – any test result
),ã	*Brucella* spp.	+[1]	Hepatitis C virus	)[1],ã	Rubella virus and anti-rubella-IgM

					serologies
),ã	*Burkholderia mallei* and *B. pseudomallei*	+[1]	Hepatitis D virus	),ã	*Salmonella* spp.
+,ã[4]	*Campylobacter* spp.	+[1],ã[4]	Hepatitis E virus	),ã[4]	*Shigella* spp.
+,ã[4]	Carbapenem-resistant Enterobacteriaceae (CRE)	+	HIV—any test result (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing), except from a negative screening test	+,ã[4]	*Streptococcus* group A, from a normally sterile site
+	CD_4-T-lymphocyte count	+	HIV—any test result for an infant (by culture, antigen, antibodies to the virus, detection of viral nucleic acid, or genetic sequencing)	+	Streptococcus group B, from a normally sterile site in an infant younger than 90 days of age
),ã[4]	Chikungunya virus	+,ã[4]	Influenza virus	+,ã[4]	*Streptococcus pneumoniae* and its drug sensitivity pattern, from a normally sterile site
+	*Chlamydia trachomatis*	),+	*Legionella* spp. (excluding single serological results)	+[1]	*Treponema pallidum* (syphilis) or rapid plasma reagin
+	*Chlamydia psittaci /Chlamydophila psittaci*	)	*Leptospira* spp.	+	*Trypanosoma cruzi* (Chagas disease)
%,(	*Clostridium botulinum* toxin (botulism)	)	*Lymphocytic choriomeningitis* virus	),ã	Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus*
+,ã[4]	*Coccidioides* spp.	),ã	*Listeria* spp., from a normally sterile site	%,(,ã	Variola virus (smallpox)
)	*Coxiella burnetti*	([1],ã	Measles virus and anti-measles-IgM serologies	),ã	*Vibrio* spp.
)	*Cryptosporidium* spp.	+[2]	Methicillin-resistant *Staphylococcus aureus*, from a normally sterile site	%,(,ã	Viral hemorrhagic fever agent
)	*Cyclospora* spp.	)[1],ã	Mumps virus and anti-mumps-IgM serologies	+	West Nile virus
),ã[4]	Dengue virus	),ã[3]	*Mycobacterium tuberculosis* complex and its drug sensitivity pattern	(,ã	Yellow fever virus
+	*Ehrlichia* spp.	+ ,ã[4]	*Neisseria gonorrhoeae* and, if performed, the drug sensitivity pattern	%,(,ã	*Yersinia pestis* (plague)
%,(	Emerging or exotic	(,ã	*Neisseria meningitidis*, from a	),ã	*Yersinia* spp. (other

	disease agent		normally sterile site		than *Y. pestis*)
+	*Entamoeba histolytica*	)	Norovirus	),ã	Zika virus
),ã	*Escherichia coli*, *Shiga* toxin-producing	(	Novel coronavirus infection (e.g., SARS or MERS)		

Key:

% Submit a report immediately after receiving one specimen for detection of the agent. Report the receipt of subsequent specimens within five working days after receipt.

(Submit a report within 24 hours after obtaining a positive test result.

) Submit a report within one working day after obtaining a positive test result.

+ Submit a report within five working days after obtaining a positive test result or a test result specified in Table 2.3.

ã Submit an isolate of the organism for each positive culture, if available, or a specimen for each positive test result to the Arizona State Laboratory within one working day.

+ Submit an isolate of the organism for each positive culture to the Arizona State Laboratory within one working day.

When appearing after one of the symbols above, the following modify the requirement:

[1] When reporting a positive result for any of the specified tests, report the results of all other tests performed for the subject as part of the disease panel or as a reflex test.

[2] Submit a report only when an initial positive result is obtained for an individual.

[3] Submit an isolate or specimen of the organism, as applicable, only when an initial positive result is obtained for an individual, when a change in resistance pattern is detected, or when a positive result is obtained ≥ 12 months after the initial positive result is obtained for an individual.

[4] Submit an isolate or specimen, as applicable, only by request.

[5] Submit an isolate of the organism, if available, or a specimen when a positive result is obtained for an individual < 5 years of age.

R9-6-205. Reporting Requirements for a Pharmacist or an Administrator of a Pharmacy

A. A pharmacist who fills an individual's initial prescription for two or more of the drugs listed in subsection (B) or an administrator of a pharmacy in which an individual's initial prescription for two or more of the drugs listed in subsection (B) is filled shall, either personally or through a representative, submit a report, in a Department-provided format, that complies with subsection (C) to the Department within five working days after the prescription is filled.

B. Any combination of two or more of the following drugs when initially prescribed for an individual triggers the reporting requirement of subsection (A):

1. Isoniazid,
2. Streptomycin,
3. Any rifamycin,
4. Pyrazinamide, or
5. Ethambutol.

C. A pharmacist or an administrator of a pharmacy shall submit a report required under subsection (A) that includes:

1. The following information about the individual for whom the drugs are prescribed:
    a. Name,
    b. Address,
    c. Telephone number, and
    d. Date of birth; and
2. The following information about the prescription:
    a. The name of the drugs prescribed,
    b. The date of prescription, and
    c. The name and telephone number of the prescribing health care provider.

R9-6-206. Local Health Agency Responsibilities Regarding Communicable Disease Reports

A. The Department shall notify each local health agency of the format to be used by:

1. A health care provider required to report when making a report required under R9-6-202(A) and Table 2.1;
2. An administrator of a health care institution or correctional facility when making a report required under R9-6-202(B) and Table 2.1; and
3. An administrator of a school, child care establishment, or shelter when making a report required under R9-6-203(A) and Table 2.2.

B. A local health agency shall inform health care providers required to report and administrators of health care institutions, correctional facilities, schools, child care establishments, and shelters of the format to use when making a report, as specified in subsection (A).

C. Except as specified in Table 2.4 and Article 3, a local health agency shall provide to the Department the information contained in each report of a case, suspect case, or occurrence received by the local health agency under R9-6-202 or R9-6-203, including any report of disease in a nonresident

of the jurisdiction who is or has been diagnosed or treated in the jurisdiction, within five working days after receipt and shall specify:

1. Which of the following best describes the individual identified in each report:
    a. The individual meets the case definition for a case of the specific disease,
    b. The individual is a suspect case,
    c. The individual does not meet the case definition for a case or suspect case of the specific disease, or
    d. The local health agency has not yet determined the status of the disease in the individual; and
2. The status of the epidemiologic investigation for each report.

D. Except as specified in Table 2.4 and Article 3, a local health agency shall submit to the Department a report, in a Department-provided format, of an epidemiologic investigation conducted by the local health agency:

1. In response to a report of a case, suspect case, or occurrence:
    a. Submitted under R9-6-202 or R9-6-203, or
    b. About which the local health agency was notified by the Department;
2. Within 30 calendar days after receiving the report submitted under R9-6-202 or R9-6-203 or notification by the Department;
3. If an epidemiologic investigation is required for the reported disease under Article 3; and
4. Including in the report of the epidemiologic investigation:
    a. The information described in:
        i. R9-6-202(C) for a report submitted under R9-6-202,
        ii. R9-6-203(B) for a report submitted under R9-6-203, or
        iii. R9-6-202(C) for a report about which the Department notified the local health agency;
    b. A description of all laboratory or other test results, performed in addition to the laboratory tests described in R9-6-202(C) and contributing to the diagnosis;
    c. A description of the case's symptoms of the disease and other signs that may be observed that indicate that the individual may have the disease, if applicable;
    d. A classification of the case according to the case definition;
    e. A description of the condition or status of the case at the end of the epidemiologic investigation;

f. A description of the case's specific risk factors for acquiring the disease or other epidemiologic evidence of how the case acquired the infection that resulted in the disease;

g. A description of how the local health agency provided or arranged for the case to receive health education about the nature of the disease and how to prevent transmission or limit disease progression;

h. A description of the case's specific risk factors for transmitting the disease considered by the local health agency when conducting an assessment of contacts;

i. A description of the control measures used by the local health agency to reduce the spread of the disease; and

j. The date the report of the case, suspect case, or occurrence was submitted or the Department notified the local health agency.

E. For each instance when the local health agency receives a report or reports indicating an outbreak or possible outbreak, the local health agency shall:

1. Within 24 hours after receiving the report or reports, provide to the Department, in a Department-provided format, the following information:
   a. The location of the outbreak or possible outbreak;
   b. If known, the number of cases and suspect cases;
   c. The date that the outbreak was reported or the dates that cases suggestive of an outbreak were reported;
   d. The setting of the outbreak or possible outbreak;
   e. The name of the disease suspected or known to be the cause of the outbreak or possible outbreak; and
   f. The name and telephone number of an individual at the local health agency who can serve as a point of contact regarding the outbreak or possible outbreak; and
2. Within 30 calendar days after receiving the last report or reports associated with the outbreak, submit to the Department a report, in a Department-provided format, of the epidemiologic investigation conducted by the local health agency in response to the outbreak or possible outbreak, including:
   a. A description of the outbreak location and setting;
   b. The date that the local health agency was notified of the outbreak;
   c. A description of how the local health agency verified the outbreak;
   d. The number of individuals reported to be ill during the outbreak;

e. The number of individuals estimated to be at risk for illness as a result of the outbreak;
f. The specific case definition used;
g. A summary profile of the signs and symptoms;
h. An epidemiologic curve;
i. A copy of the laboratory evidence collected, including all laboratory test results, for all specimens submitted for testing to a laboratory other than the Arizona State Laboratory;
j. Hypotheses of how the outbreak occurred;
k. A description of the control measures used and the dates the control measures were implemented;
l. The conclusions drawn based upon the results of the epidemiologic investigation;
m. Recommendations for preventing future outbreaks; and
n. The name, address, and telephone number of the individual making the report to the Department.

Table 2.4. Local Health Agency Reporting Requirements

+,è	Amebiasis	+	Gonorrhea	),è,ã	Rubella (German measles)
+,è	Anaplasmosis	),è	*Haemophilus influenza*, invasive disease	(,è,ã	Rubella syndrome, congenital
(,è,ã	Anthrax	+,è	Hansen's disease (Leprosy)	), è	Salmonellosis
+,è	Arboviral infection	),è	Hantavirus infection	),è	Shigellosis
+,è	Babesiosis	),è	Hemolytic uremic syndrome	(,è,ã	Smallpox
+,è	Basidiobolomycosis	),è	Hepatitis A	),è	Spotted fever rickettsiosis (e.g., Rocky Mountain spotted fever)
(,è,ã	Botulism	+,è	Hepatitis B and Hepatitis D	+	Streptococcal group A infection, invasive disease
+,è,ã	Brucellosis	+,è	Hepatitis E	+	Streptococcal group B infection in an infant younger than 90 days of age, invasive disease
+,è	Campylobacteriosis	+,è	HIV infection and related disease	+	*Streptococcus pneumoniae* infection, (pneumococcal invasive disease)

+,è	Chagas infection and related disease (American Trypanosomiasis)	),è	Influenza-associated mortality in a child	+,è	Syphilis
+,è	Chancroid (*Haemophilus ducreyi*)	),è	Legionellosis (Legionnaires' disease)	+,è	Taeniasis
+,è	Chikungunya	),è	Leptospirosis	+,è	Tetanus
+	*Chlamydia trachomatis* infection	),è,ã	Listeriosis	+, è	Toxic shock syndrome
),è	Cholera	+, è	Lyme disease	),è	Trichinosis
+	Coccidioidomycosis (Valley Fever)	),è	Lymphocytic choriomeningitis	), è,ã	Tuberculosis, active disease
+,è	Colorado tick fever	+ ,è	Malaria	),è	Tuberculosis latent infection in a child five years of age or younger (positive screening test result)
+,è	Creutzfeldt-Jakob disease	(,è,ã	Measles (rubeola)		
+,è	Cryptosporidiosis	),è,ã	Melioidosis	(,è,ã	Tularemia
+,è	*Cyclospora* infection	(,è,ã	Meningococcal invasive disease	),è	Typhoid fever
+,è	Cysticercosis	),è,ã	Mumps	),è	Typhus fever
),è	Dengue	(,è	Novel coronavirus (e.g., SARS or MERS)	),è	Vaccinia-related adverse event
(,è	Diphtheria	),è	Pertussis (whooping cough)	) ,è,ã	Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus*
+,è	Ehrlichiosis	(,è,ã	Plague	+ ,è[1]	Varicella (chickenpox)
(,è	Emerging or exotic disease	(,è,ã	Poliomyelitis (paralytic or non-paralytic)	),è	*Vibrio* infection
(,è	Encephalitis, parasitic	+,è	Psittacosis (ornithosis)	(,è,ã	Viral hemorrhagic fever
),è	Encephalitis, viral	),è	Q Fever	+, è	West Nile virus infection
),è	*Escherichia coli*, Shiga toxin-producing	(,è,ã	Rabies in a human	(,è,ã	Yellow fever
+,è	Giardiasis	),è	Relapsing fever (borreliosis)	),è,ã	Yersiniosis (enteropathogenic *Yersinia*)
),è,ã	Glanders			),è,ã	Zika virus infection

Key:

(Notify the Department within 24 hours after receiving a report under R9-6-202 or R9-6-203.
) Notify the Department within one working day after receiving a report under R9-6-202 or R9-6-203.
+ Notify the Department within five working days after receiving a report under R9-6-202 or R9-6-203.
è Submit an epidemiologic investigation report within 30 calendar days after receiving a report under R9-6-202 or R9-6-203 or notification by the Department.
ã Ensure that an isolate of the organism for each positive culture, if available, or a specimen for each positive test result is submitted to the Arizona State Laboratory within one working day.
[1] Submit an epidemiologic investigation report only if a case or suspect case has died as a result of the communicable disease.

R9-6-207. Federal or Tribal Entity Reporting

A. To the extent permitted by law, a federal or tribal entity shall comply with the reporting requirements in this Article as follows:

1. If the federal or tribal entity is participating in the diagnosis or treatment of an individual, the federal or tribal entity shall comply with the reporting requirements in R9-6-202 and Table 2.1 for a health care provider;
2. If the federal or tribal entity is operating a facility that provides health care services, the federal or tribal entity shall comply with the reporting requirements in R9-6-202 and Table 2.1 for an administrator of a health care institution;
3. If the federal or tribal entity is operating a correctional facility, the federal or tribal entity shall comply with the reporting requirements in R9-6-202 and Table 2.1 for an administrator of a correctional facility;
4. If the federal or tribal entity is operating a facility that provides child care services, the federal or tribal entity shall comply with the reporting requirements in R9-6-203 and Table 2.2 for an administrator of a child care establishment;
5. If the federal or tribal entity is operating a facility that offers instruction to students in a grade level from kindergarten through grade 12, a college or university, a "private vocational program" as defined in A.R.S. § 32-3001, or an institution that grants a "degree" as defined in A.R.S. § 32-3001, the federal or tribal entity shall comply with the reporting requirements in R9-6-203 and Table 2.2 for an administrator of a school;
6. If the federal or tribal entity is operating a clinical laboratory, the federal or tribal entity shall comply with the reporting requirements in R9-6-204 and Table 2.3 for a clinical laboratory director; and
7. If the federal or tribal entity is operating a facility that provides pharmacy services, the federal or tribal entity shall comply with the reporting requirements in R9-6-205 for an administrator of a pharmacy.

B. For the purposes of this Section, "federal or tribal entity" means a person operating within this state, whether on federal or tribal land or otherwise, under the authority of an agency or other administrative subdivision of the federal government or a tribal nation and who is:

1. Licensed as a doctor of allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of this or another state;
2. Licensed as a physician assistant under the laws of this or another state;
3. Licensed as a registered nurse practitioner under the laws of this or another state;
4. Licensed as a dentist under the laws of this or another state;
5. Operating a facility that provides health care services;
6. Operating a correctional facility;
7. Operating a facility that provides child care services;
8. Operating a facility that offers instruction to students in a grade level from kindergarten through grade 12, a college or university, a "private vocational program" as defined in A.R.S. § 32-3001, or an institution that grants a "degree" as defined in A.R.S. § 32-3001;
9. Operating a clinical laboratory; or
10. Operating a facility that provides pharmacy services.

Statutory Authority for the Rules in 9 A.A.C. 6, Article 2

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.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 13

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: **Sep 6, 2023**

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

FROM: Council Staff

DATE: **July 27, 2023**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 28, Article 13

Summary

This Five Year Review Report (5YRR) from Arizona Health Care Cost Containment System (AHCCCS) or (Administration), covers fifteen (15) rules in Title 9, Chapter 28, Article 13 related to the Freedom to Work Program in the Arizona Long Term Care System. AHCCCS, is Arizona's Medicaid program designed to deliver quality health care under managed care. The Freedom to Work program is a program that provides health coverage to working people with disabilities in Arizona who are not otherwise eligible for AHCCCS. People in the Freedom to Work program get full AHCCCS coverage in exchange for a monthly premium. The program pays for the same services that standard AHCCCS covers, including visits to the doctor, hospital stays, medical equipment, home care services, and mental health services.

Proposed Action

The Administration has initiated the rulemaking process to fix all of the issues outlined in this report and to bring the language of the rules into alignment with policy. An exception to the Moratorium was received from the Governor's Office on May 23, 2023 and a Notice of Proposed Rulemaking was submitted to the Secretary of State.

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

The Administration cites both general and specific statutory authority for these rules.

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

The Administration identifies the following as stakeholders: contractors, the private sector, members, providers, small businesses, political subdivisions, applicants, the Administration/Department, and taxpayers. All stakeholders were anticipated to have minimal to no impact as a result of the changes to the rule language. The Administration states that the economic impact of the chapter remains the same as the prior 5YRR.

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 Administration believes the changes to the rule reflect the most efficient and cost-effective method for AHCCCS and other parties involved.

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

The Administration states 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 Administration indicates the rules are generally consistent with other rules and statutes with the following exceptions:

- cross references in rules R9-28-1303, R9-28-1304, R9-28-1309 should be updated as the relevant information in these rules have moved
- Information provided in subsection B of rule R9-28-1313; subsection 2 of rule R9-28-1316; and subsection B of rule R9-28-1324 should be updated

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

The Administration indicates the rules are generally consistent with other rules and statutes with the following exceptions:

- cross references in rules R9-28-1303, R9-28-1304, R9-28-1309 should be updated as the relevant information in these rules have moved
- Information provided in subsection B of rule R9-28-1313; subsection 2 of rule R9-28-1316; and subsection B of rule R9-28-1324 should be updated

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

The Administration indicates the rules are generally effective in achieving its objectives with the following exception: cross references in rules R9-28-1303, R9-28-1304, R9-28-1309 should be updated as the relevant information in these rules have moved.

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

The Administration indicates the rules are generally enforced as written with the following exceptions:

- cross references in rules R9-28-1303, R9-28-1304, R9-28-1309 should be updated as the relevant information in these rules have moved
- Information provided in subsection B of rule R9-28-1313; subsection 2 of rule R9-28-1316; and subsection B of rule R9-28-1324 should be updated

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 Administration states the rules are not more stringent than 42 U.S.C. 1382a and 20 C.F.R. Parts 416, 435, 431.231.

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 Administration states that this section is not applicable as the rules do not require a permit or license.

11. **Conclusion**

As indicated above, the rules are generally clear, concise, and understandable and effective in achieving their objectives. The Administration has initiated the rulemaking process and received an exception from the Governor's Office from the rulemaking moratorium and has submitted a Notice of Proposed Rulemaking to the Secretary of State. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Director

May 30, 2023

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 13;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 28, Article 13 due on May 30, 2023.

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

For questions about this report, please contact me or Sladjana Kuzmanovic at 602-417-4116 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel
Office of the General Counsel

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 13

May 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2932.

Specific Statutory Authority: A.R.S. § 36-2950.

2. The objective of each rule:

Rule	Objective
R9-28-1301	Provides general requirements for the Freedom to Work (FTW) program.
R9-28-1302	Provides the general administrative requirements regarding confidentiality.
R9-28-1303	Describes the application process to apply for the FTW program.
R9-28-1304	Describes the required notification in writing regarding the determination of eligibility for the FTW program.
R9-28-1305	Describes the specific type of changes that a member must report.
R9-28-1306	Describes when eligibility for FTW can change or be affected.
R9-28-1307	Describes when the Administration may notify a member of an action.
R9-28-1308	Provides the opportunity for a member to request a hearing.
R9-28-1309	Describes conditions that must be met to be eligible for the FTW program.
R9-28-1313	Describes the premium requirement that a member must pay when qualified for FTW.
R9-28-1316	Describes the exclusions from eligibility for certain institutionalized persons.
R9-28-1320	Describes additional eligibility criteria for the Basic Coverage Group.
R9-28-1321	Describes how share of cost is determined for a person on ALTCS and the FTW program.
R9-28-1323	Describes AHCCCS's enrollment responsibilities.
R9-28-1324	Describes when a redetermination of eligibility for FTW must be conducted.

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

Rule	Explanation
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.

R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.

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

Rule	Explanation
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-28-1313	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-28-1316	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-28-1324	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

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

Rule	Explanation
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-28-1313	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-28-1316	Update Subsection 2 to read:

	Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-28-1324	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

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

Rule	Explanation
R9-28-1301	Remove the reference to Article 2 because it is not relevant.
R9-28-1303	Cross reference to R9-22-1406 in Subsections B & C should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-28-1304	Cross reference to R9-28-401.01(G)(2) should be changed to R9-28-401.01(E)(2) since the relevant information in the rule was moved.
R9-28-1309	Cross reference to R9-22-1502 should be changed to R9-22-306 since the relevant information in the rule was moved.
R9-28-1313	Update Subsection B to read: The Administration shall process premiums under 9 A.A.C. 31, Articles 1409 – 1419.
R9-28-1316	Update Subsection 2 to read: Age 22 through age 64 and is residing in an ICF/IID except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.
R9-28-1324	Update Subsection B to read: Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.

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:

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying; therefore the economic impact of this chapter remains the same as the prior 5YRR.

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

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

The Administration has requested an exemption from the statutory rulemaking moratorium, and it was approved by the Governor's office on May 23, 2023. AHCCCS is currently drafting the Notice of Proposed Rulemaking and will submit it to the Secretary of State's office for publication as soon as possible. The Administration anticipates being able to supplement this filing with the filed Notice of Proposed Rulemaking in advance of the Council's Study Session.

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 changes that are proposed in this 5YRR are meant for clarifying purposes and do not impose any additional burdens or costs on regulated persons. In addition, they are they impost the least burden and cost to achieve the same benefits as the Article currently provides to regulated persons.

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

The rules are not more stringent than 42 U.S.C. 1382a and 20 C.F.R. Parts 416, 435, 431.231.

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

Not applicable.

14. Proposed course of action

The Administration has initiated making all of the changes outlined in this report in the Notice of Proposed Rulemaking to bring the language of the rules into alignment with policy, as well as improving clarity and conciseness. As noted above, the Administration anticipates being able to supplement this filing with the filed Notice of Proposed Rulemaking in advance of the Council's Study Session.

tor establishes the probable existence of first-party liability or third-party liability.

Historical Note
Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1107. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1108. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

ARTICLE 12. REPEALED

Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-28-1201. Repealed

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

ARTICLE 13. FREEDOM TO WORK

Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1301. General Freedom to Work Requirements
The Administration shall determine eligibility for AHCCCS medical services under Article 2 of this Chapter and A.A.C. R9-22-1901.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1302. General Administration Requirements
The Administration shall comply with the confidentiality rule under A.A.C. R9-22-512(C).

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1303. Application for Coverage
A. A person may apply by submitting an application to an Administration office.
B. The application date is the date the application is received at an Administration office.
C. The provisions of A.A.C. R9-22-1406(B) and (D) apply to this Section.
D. An applicant or representative who files an application may withdraw the application either orally or in writing. The Administration shall send an applicant withdrawing an application a denial notice under R9-28-1304.
E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1304. Notice of Approval or Denial
The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action and:
1. If approved:
   a. The effective date of eligibility,
   b. The amount the person shall pay, and
   c. An explanation of the person's hearing rights specified in 9 A.A.C. 34; or
2. If denied, the information required by R9-28-401.01(G)(2).

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1305. Reporting and Verifying Changes
An applicant or member shall report and verify changes as described under R9-28-411(A), to the Administration, including any changes in the spouse's income that may affect the share of cost.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1306. Actions that Result from a Redetermination or Change
The processing of a redetermination or change shall result in one of the following actions:
1. No change in eligibility, share-of-cost, or premium,
2. Discontinuance of eligibility if a condition of eligibility is no longer met,
3. A change in the person's share-of-cost,
4. A change in premium amount, or
5. A change in the coverage group under which a person receives AHCCCS medical coverage.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1307. Notice of Adverse Action

A. The requirements under R9-28-411(D)(1) apply.

B. Advance notice of a change in eligibility, share of cost, or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to:
1. Discontinue eligibility,
2. Increase a person's share-of-cost,
3. Increase the premium amount, or
4. Reduce benefits from ALTCS to acute care services.

C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
1. A member provides a clearly written statement, signed by that member, that services are no longer wanted;
2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that termination of eligibility or reduction of services will be the result of supplying the information and signs a written statement waiving advance notice;
3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable. A member whose eligibility is discontinued under this subsection is subject to reinstatement of discontinued services under 42 CFR 431.231(d);
4. A member has been admitted to a public institution where a person is ineligible for coverage;
5. A member has been approved for Medicaid in another state; or
6. The Administration receives information confirming the death of a member.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1308. Request for Hearing

An applicant or member may request a hearing under 9 A.A.C. 34.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1309. Conditions of Eligibility

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:
1. Furnish a valid Social Security Number (SSN);
2. Be a resident of Arizona;
3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
4. Be at least 16 years of age, but less than 65 years of age;
5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
   a. The unearned income of the applicant or member shall be disregarded,
   b. The income of a spouse or other family members shall be disregarded, and
   c. The deduction for a minor child shall not apply;
6. Reside in a living arrangement specified under R9-28-406(A);
7. Be determined as physically disabled by meeting the medical criteria under Article 3 of this Chapter; and
8. Comply with the member responsibility provisions under A.A.C. R9-22-1502(D) and (F).

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1310. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1311. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1312. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1313. Premium Requirements

A. As a condition of eligibility, an applicant or member shall:
1. Pay the premium required under subsection (B).
2. Not have any unpaid premiums that exceed the premium amount for one month.

B. The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
1. A member who has countable income:
   a. Under $500, the monthly premium payment shall be $0.
   b. Over $500 but not greater than $750, the monthly premium payment shall be $10.
2. The premium for a member shall be increased by $5 for each $250 increase in countable income above $750.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1314. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1315. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1316. Institutionalized Person
A person is not eligible for AHCCCS medical coverage if the person is:
1. An inmate of a public institution and federal financial participation (FFP) is not available, or
2. Older than age 20 but younger than age 65 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1317. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1318. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1319. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1320. Additional Eligibility Criteria for the Basic Coverage Group
As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant's or member's income.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1321. Share of Cost
The Director shall determine the amount a person shall pay for the cost of ALTCS services (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. Share of cost shall be calculated for people who reside in a medical institution for an entire calendar month under R9-28-408(G) and R9-28-410(C) except that the personal-needs allowance shall be increased by 50 percent of the member's earned income.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1322. Repealed

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

R9-28-1323. Enrollment
The Administration shall enroll members under R9-28-412 through R9-28-418.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

R9-28-1324. Redetermination of Eligibility
A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
C. Medical Improvement. If a member is no longer disabled under Article 3 of this Chapter, the Administration shall determine if the member is eligible under other coverage groups.

Historical Note
New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.

2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.

3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.

4. Providing technical assistance to the program contractors.

5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.

6. Conducting quality control on eligibility determinations and preadmission screenings.

7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.

8. Establishing an enrollment system.

9. Establishing a member case management tracking system.

10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.

11. Coordinating benefits as provided in section 36-2946.

12. Establishing standards for the coordination of services.

13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.

14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.

15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.

2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.

3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.

2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2950. Services to persons with disabilities; eligibility; premiums

A. Subject to the approval of the centers for medicare and medicaid services, beginning on January 1, 2002, the Arizona health care cost containment system administration shall provide services pursuant to this article to any person with a disability who is defined as eligible pursuant to section 36-2931, paragraph 5, subdivision (d), who meets the income requirements of subsection B of this section and who has too much income or resources to qualify for the system pursuant to section 36-2934.

B. A person meets the income requirements of this section if the person's countable income does not exceed two hundred fifty per cent of the federal poverty guidelines. The administration shall use the supplemental security income methodology. For purposes of this subsection, countable income does not include the person's unearned income, the person's spouse's or any other family member's earned or unearned income or a deduction for a minor child.

C. The administration shall adopt rules for the collection of premiums from persons who qualify for services pursuant to this section. The premium shall not exceed two per cent of the person’s countable income.

D. The administration shall develop and implement a process for eligibility determinations for persons who apply for eligibility and annual redeterminations for continued eligibility. The administration shall also develop and implement a process to determine medically improved disabilities. The administration may enter into an intergovernmental agreement with the department of economic security or may contract with participating health plans to conduct eligibility determinations or redeterminations. The administration may not use a resource test to determine or redetermine eligibility.

ARIZONA DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 4, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: **Sep 6, 2023**

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

FROM: Council Staff

DATE: **July 27, 2023**

SUBJECT: **ARIZONA DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 4, Article 4

Summary

This Five Year Review Report (5YRR) from Arizona Department of Transportation (ADOT), covers twelve (12) rules and one (1) Table in Title 17, Chapter 4, Article 4, Driver's Licenses. This report covers driver licenses, non-operating identification licenses, and other credentials issued by the Department and reflects reasonable licensing requirements, restrictions, and qualifications for motor vehicle drivers. These rules also inform the public of the actions the Department may take to curb unsafe driving behavior.

Proposed Action

The Department only partially completed its previous proposed course of action due to lack of internal and external stakeholder support. However, the Department is currently seeking written approval from the Governor's Office to conduct a rulemaking to complete its previous proposed course of action and anticipates filing a Notice of Proposed Expedited Rulemaking to amend these rules by November 27, 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 economic impact has essentially remained the same for all rules under 17 A.A.C. 4 as estimated in the original or last economic impact statement prepared for the rules. Stakeholders include the Department, individuals applying for driver licenses, non-operating identification licenses, and entities and persons required to have credentials issued by the Department.

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

The Department states that it routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The Department believes the rules impose only minimal costs and has determined that all rules located under 17 A.A.C. 4 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives.

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

The Department has received no written criticism of these rules in the last five years.

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

The Department indicates that the rules are generally clear, concise, and understandable with the following exceptions: terminology needs to be updated, Table 1 should include descriptions of all violations contained in statute; subsections in R17-4-408 need to be updated as they were renumbered and time frames for the restricted driver's license should be updated; statutory definitions in R17-4-410 need to be updated; and R17-4-411 needs clarification on reporting requirements for ignition interlock device manufacturers and installers and fees charged for Special Ignition Interlock Restricted Driver Licenses.

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

The Department indicates that the rules are generally consistent with other rules and statutes with the following exceptions: terminology needs to be updated, Table 1 should include descriptions of all violations contained in statute; subsections in R17-4-408 need to be updated as they were renumbered and time frames for the restricted driver's license should be updated; statutory definitions in R17-4-410 need to be updated; and R17-4-411 needs clarification on reporting requirements for ignition interlock device manufacturers and installers and fees charged for Special Ignition Interlock Restricted Driver Licenses.

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

The Department indicates that the rules are generally effective in achieving its objectives but believes updating the information and citations of these rules will

improve the effectiveness of the rules.

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

The Department indicates that the rules are generally 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 states that the rules are not more stringent than corresponding federal law.

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

The Department states that all of these rules except for R17-4-407, were adopted prior to July 29, 2010. R17-4-407 was analyzed and determined a general permit cannot be applied because of the stringent security and issuance requirements of federal law.

In addition, in an email sent to Council staff, the Department stated they believe that the exceptions provided under A.R.S. § 41-1037(A)(1) and (A)(2) would apply, since those credentials are only federally recognized if issued by the Department in substantial compliance with the specific federal issuance criteria prescribed under 6 CFR 37, and travel-compliant credential issuance is specifically authorized under A.R.S. § 28-3175(A).

11. **Conclusion**

As indicated above, the rules are generally enforced as written and effective in achieving their objectives. The Department is currently seeking written approval from the Governor's Office to conduct a rulemaking to complete its previous proposed course of action and anticipates filing a Notice of Proposed Expedited Rulemaking to amend these rules by November 27, 2023. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

May 31, 2023

VIA EMAIL: grrc@azdoa.gov

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 4, Article 4, Five-year Review Report

Dear Ms. Sornsin:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering rules located under 17 A.A.C. Chapter 4, Article 4, which is due to the Council on May 31, 2023. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301.

Section R17-4-402, Restricted Permit During a Financial Responsibility (Accident) Suspension, was not reviewed with the intention that the rule will expire under A.R.S. § 41-1056(J).

The Department 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 John Lindley, Senior Rules Analyst, at (480) 267-6543 or email JLindley@azdot.gov.

Sincerely,

Jennifer Toth
Director

Enclosure

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 4

Section B

Analysis of Individual Rules and

Identical Information within Rule Groups

Governor's Regulatory Review Council

Five-Year-Review Report

Title 17. Transportation

Chapter 4. Department of Transportation - Title, Registration, and Driver Licenses

Article 4. Driver Licenses

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

General Statutory Authority for all rules located under this Article: A.R.S. § 28-366 and 28-7045

Specific Statutory Authority is as provided below:

Rule	Specific Statutory Authority:
R17-4-401	A.R.S. §§ 28-1526, 28-1465, and 28-3306
R17-4-403	A.R.S. §§ 28-3002, 28-3165, and 28-3170
R17-4-404	A.R.S. §§ 28-1526 and 28-3306(A)(3)
Table 1	A.R.S. §§ 28-1526 and 28-3306
R17-4-406	A.R.S. §§ 8-513 and 28-3160
R17-4-407	A.R.S. §§ 28-3002, 28-3165, 28-3175, and 6 CFR 37
R17-4-408	A.R.S. §§ 28-1461, 28-1464, and 28-1465
R17-4-409	A.R.S. § 28-3165
R17-4-410	A.R.S. § 16-112 and the National Voter Registration Act of 1993 (P.L. 103-31; 107 Stat. 77; 52 United States Code sections 20501 through 20511)
R17-4-411	A.R.S. §§ 28-1461, 28-1464, 28-1465, and 28-3002
R17-4-412	A.R.S. §§ 28-1401 through 28-1403
R17-4-413	A.R.S. § 28-3312
R17-4-414	A.R.S. §§ 28-3227 and 28-3312

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

The objective of each rule is as provided below:

Rule	Objective
R17-4-401	This rule provides a better understanding of the terms used by the Department in this Article as applicable to any person applying for or maintaining a driver license, commercial driver license, endorsement, or any other type of Arizona driver privilege, instruction permit, or non-operating identification license.
R17-4-403	This rule provides the application requirements for a duplicate driver license or duplicate non-operating identification license and prescribes the fee for such licenses.

Rule	Objective
R17-4-404	This rule gives effect to A.R.S. § 28-3306(A)(3) and (A)(4), which allows the Department to take discretionary action affecting a person's driving privilege and brings before the Department, for hearing, those who may justifiably have their driver licenses suspended or revoked. The rule also prescribes the points of demerit to be assigned to a driver, provides for assignment of a driver to a traffic survival school, prescribes driver license suspension for failure to attend traffic survival school, and prescribes driver license suspension for accumulation of excessive points.
Table 1	This Table provides the point system used by the Department to assess points on the driving record of a person convicted of certain traffic violations. The Department uses these points to track and identify drivers convicted of or adjudged to have violated traffic regulations governing the movement of vehicles. The driver point assessment process is part of a comprehensive highway safety program designed to achieve a significant reduction in traffic crashes, fatalities, and injuries on public roads. The Department assigns a point value to each moving violation; the more severe the violation, the higher the point value assigned. The Table also provides the public with a clear understanding of which traffic regulations governing the movement of motor vehicles the Department will consider when determining whether a driver is a habitually reckless or negligent driver or the frequency of a driver's traffic violations indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highway.
R17-4-406	This rule prescribes the requirements for completion of a legal guardian affidavit as part of a minor's application for a driver license or instruction permit.
R17-4-407	This rule contains the application and fee requirements prescribed by the Department for obtaining a federally-recognized travel-compliant driver license or non-operating identification license.
R17-4-408	This rule provides for the mandatory extension of a certified ignition interlock device order.
R17-4-409	This rule contains the application and fee requirements prescribed by the Department for obtaining a non-operating identification license.
R17-4-410	This rule provides the process for voter registration through the Department as required under A.R.S. § 16-112 and the National Voter Registration Act of 1993 (P.L. 103-31; 107 Stat. 77; 42 United States Code section 394).
R17-4-411	This rule prescribes additional application and fee requirements for a Special Ignition Interlock Restricted Driver License.

Rule	Objective
R17-4-412	This rule prescribes the grounds and procedures for extension of a Special Ignition Interlock Restricted Driver License.
R17-4-413	This rule prescribes requirements for reinstatement of a commercial driver license after a lifetime disqualification.
R17-4-414	This rule codifies the Department's processes for collecting, recording, and processing driver history information provided by a commercial driver license applicant under 49 CFR 383.71, as currently incorporated by reference under A.A.C. R17-5-202.

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.

These rules are generally effective in achieving their objectives, but updating the related citations and providing modernization in the rule drafting style as identified under items 4 and 10 of this report, will improve the effectiveness of the rules.

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.

These rules are not consistent with applicable state or federal statutes as provided below:

Rule	Explanation
..Table 1	The descriptions following each reference to the moving violations subject to driver point valuation under A.R.S. § 28-672(A) are not all-inclusive and should be updated to include descriptions of the additional violations contained in the statute. Additional violations include: a. Failure to make a safe lane change; b. Failure to yield the right of way when entering a freeway; c. Failure to yield the right of way at an entrance to a through highway; d. Failure to make a complete stop for a person in the crosswalk of an established school crossing; e. Failure to maintain a speed of 15 miles per hour or less in an established school crossing; and f. Failure to stop before entering the crosswalk at a stop sign.

Rule	Explanation
R17-4-408	The statutory citations in subsection (B) referencing the A.R.S. § 28-1464 subsections that contain violations, which on conviction will systematically generate a mandatory extension of the certified ignition interlock device order were renumbered from subsections (A), (C), (D), (F), and (H) to subsections (B), (C), (E), and (G). The ignition interlock restricted or limited driver license and the certified ignition interlock device extension period in subsection (C) conflicts with A.R.S. § 28-1461(E). The phrase "one year" should be changed to "six months."
R17-4-410	The terms used in this rule are in conformity with A.R.S. § 16-112 and the National Voter Registration Act of 1993 (P.L. 103-31; 107 Stat. 77; 52 United States Code sections 20501 through 20511). However, the statutory definitions of "Driver's license" and "Driver's license examiner" under A.R.S. § 16-111 are outdated and not even used in A.R.S. § 16-112. Those definitions contain the term "motor vehicle division," which although technically correct as more specifically defined for the purpose of voter registration, should be removed for the purpose of consistency to reflect organizational changes made within the Department.
R17-4-411	The rule is generally consistent with state and federal statutes and other rules made by the Department except that the eleventh month reporting requirement for certified ignition interlock device manufacturers and installers, previously provided under A.R.S. § 28-1402(C), is now accomplished electronically under A.R.S. § 28-1461(B) each time an installer obtains information recorded by a certified ignition interlock device. The rule should be updated to clarify that the fees charged by the Department for a Special Ignition Interlock Restricted Driver License are the same age appropriate fees currently required under A.R.S. § 28-3002 for any other driver license reinstatement application.

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.

The Department enforces all of the rules as written unless inconsistent with other rules and statutes as indicated under item 4.

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

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

Rule	Explanation
R17-4-401; R17-4-403; R17-4-404; Table 1; and R17-4-406 thru R17-4-414	The Department believes that these rules are generally clear, concise, and understandable, but updating the related citations and providing modernization in the rule drafting style as identified under items 4 and 10 of this report, will improve the clarity, conciseness, and understandability of the rules.

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:

Commenter	Comment	Agency's Response
R17-4-401; R17-4-403; R17-4-404; Table 1; and R17-4-406 thru R17-4-414	The Department has received no written criticism of these rules in the last five years.	

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

The economic impact has essentially remained the same for all rules located under 17 A.A.C. 4, as estimated in the original or last economic impact statement prepared for the rules. However, some updated numbers are available as provided below:

Rule	Comparison
R17-4-408	On January 2, 2018, the Department maintained 5,221,403 current driver license records. As of January 2, 2023, the Department maintained 5,307,961 current driver license records.
R17-4-409	On January 2, 2018, the Department maintained 1,057,524 current non-operating identification license records. As of January 2, 2023, the Department maintained 1,299,999 current non-operating identification license records.

Rule	Comparison
R17-4-414	This rule was originally adopted in 2008 to facilitate the approval of Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding, and later helped to ensure that the Department of Public Safety (DPS) remained eligible for those federal funds. In FY 2017, DPS administered MCSAP funding in the amount of $3,450,597 for commercial motor vehicle safety programs, size and weight enforcement, drug interdiction, and traffic safety, as prescribed under 49 CFR 350.207. In fiscal year 2023, the Arizona Department of Public Safety is eligible to apply for its share of the $398,500,000 federal grant appropriations made available for all states under 49 U.S.C. § 31104.

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

The Department has received no analysis regarding any of the rules that compares the rule's impact on this state's business competitiveness with the impact on businesses in other states.

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.

Rule	Explanation
R17-4-401	Previously indicated course of action not completed: *The term "Division" should not be used or defined in this Section. Replace with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making this change as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-403	Previously indicated course of action not completed: *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making this change as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-404	Yes, the Department completed each stated course of action for this rule by Regular Rulemaking at 19 A.A.R. 3897, effective November 29, 2013, and by Exempt Rulemaking at 21 A.A.R. 1092, effective September 1, 2015.

Rule	Explanation
Table 1	Previously indicated course of action not completed: *The descriptions following each reference to the moving violations subject to driver point valuation under A.R.S. § 28-672(A) are not all-inclusive and should be updated to include descriptions of the additional violations contained in the statute. Additional violations include:* *a. Failure to make a safe lane change;* *b. Failure to yield the right of way when entering a freeway;* *c. Failure to yield the right of way at an entrance to a through highway;* *d. Failure to make a complete stop for a person in the crosswalk of an established school crossing;* *e. Failure to maintain a speed of 15 miles per hour or less in an established school crossing; and* *f. Failure to stop before entering the crosswalk at a stop sign.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-406	Previously indicated course of action not completed: *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* *Guardian: In subsection (A)(2), the term "defined in" should be changed to "prescribed under" since the term "agency" is not actually defined in A.R.S. § 8-513. Additionally, the agency that placed the child may give permission on request of a foster parent.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

Rule	Explanation
R17-4-407	Yes, the Department completed the stated course of action for this rule by Exempt Rulemaking at 22 A.A.R. 819, April 15, 2016. On September 18, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to implement Laws 2015, Chapter 294, allowing issuance of driver and identification licenses that can be used for boarding federally regulated commercial aircraft, or to access restricted areas in federal facilities, nuclear power plants or military facilities. However, since the Department established the rule by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, Council staff determined that the Department's ability to continue collecting the fee was subject to the requirements of A.R.S. 41-1008(E) and (F), so the Department re-established the fee by Final Rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019.
R17-6-408	Previously indicated course of action partially completed: The Department worked with the legislature to partially complete the course of action indicated in its previous five-year review report to *establish a manageable standard for calculating how many missed rolling retests constitute a reportable violation under the circumvention provision of A.R.S. § 28-1461(E)*. That issue was clearly addressed in statute by Laws 2018, Ch. 105, § 2, effective August 3, 2018. Previously indicated course of action not completed: *The reference to A.R.S. § 28-101(12) in subsection (A) should be amended to read A.R.S. § 28-101 since the terms under A.R.S. § 28-101 have been renumbered.* *The extension period in subsection (C) conflicts with A.R.S. § 28-1461(E). The phrase "one year" should be changed to "six months."* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

Rule	Explanation
R17-4-409	Yes, the Department completed the stated course of action for this rule by Exempt Rulemaking at 22 A.A.R. 819, April 15, 2016. On September 18, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to implement Laws 2015, Chapter 294, allowing issuance of driver and identification licenses that can be used for boarding federally regulated commercial aircraft, or to access restricted areas in federal facilities, nuclear power plants or military facilities. However, since the Department established the rule by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, Council staff determined that the Department's ability to continue collecting the fee was subject to the requirements of A.R.S. 41-1008(E) and (F), so the Department re-established the fee by Final Rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019.
R17-4-410	Previously indicated course of action not completed: *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-411	Previously indicated course of action not completed: *The phrase "an person" should be corrected to read "a person."* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-412	Previously indicated course of action not completed: *The phrase "The person may be rebut the presumption…" under subsection (C)(2) should be corrected to read, "The person may rebut the presumption…".* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

Rule	Explanation
R17-4-413	Previously indicated course of action not completed: *All gender-specific references to "his or her" need to be replaced with more appropriate terms for clarity.* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-414	Previously indicated course of action not completed: *The Department, in partnership with the Department of Public Safety (DPS), is currently in the process of analyzing and updating all of its motor carrier safety and hazardous materials regulations under 17 A.A.C. 5, Article 2. If that rule package continues to incorporate by reference 49 CFR 383 without exception, this rule may no longer be necessary.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

The Department's previously stated course of action was to file a Notice of Proposed Rulemaking by June 30, 2018, which would have included all amendments outlined under items 4 and 10 of the 2018 Five-year Review Report on these rules. However, the Department was only able to complete some of the anticipated amendments as indicated above under Sections R17-4-407, R17-4-408, and R17-4-409. The Department's efforts to extensively revise and streamline all of Article 4 failed to generate the required internal and external stakeholder support needed to finally bring to fruition what has proven to be a challenging effort. Going forward, the Department anticipates filing a Notice of Proposed Expedited Rulemaking to complete the amendments as outlined above and under item 4 by November 27, 2023, if approved by the Governor. The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking.

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 least burdensome options for any process or procedure required of the regulated public or industry. These rules impose only minimal costs. Therefore, the

Department has determined that all rules located under 17 A.A.C. 4 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_**

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 regulations in 49 CFR 383, 390, 391, and 1572 are applicable to R17-4-413 and R17-4-414, but the rules are not more stringent than any 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:

With the exception of R17-4-407, all of the rules in this Article were adopted before July 29, 2010. However, the Department has analyzed each of the rules for compliance with A.R.S. § 41-1037, and has determined that each credential issued by the Department under these rules is a "general permit" since the activities and practices authorized by each class of license are identical in nature and subject to the same restrictions. Only the following exception would apply:

Rule	Compliance or Explanation
R17-4-407	Because of the stringent security and issuance requirements of the federal law, these credentials cannot be issued as general permits as required under A.R.S. § 41-1037.

14. Proposed course of action

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

Rule	Proposed Course of Action

R17-4-401; R17-4-403; R17-4-404; Table 1; R17-4-406; R17-4-408; R17-4-410; R17-4-411; R17-4-412; R17-4-413; R17-4-414.	Many of the rules in this Article contain procedures necessary for the Department to determine what level of driver improvement measures are necessary and appropriate on receiving notification that a driver was convicted of a violation, or a series of violations, so egregious as to indicate that the driver is habitually reckless or negligent, or the frequency of the driver's traffic violations indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highway. As such, these rules are critical to the Department's driver licensing operations and must be carefully analyzed and vetted by a number of stakeholders before any changes are made. Stakeholders for these rules include the Arizona Governor's Office of Highway Safety, law enforcement and court personnel, legal professionals, traffic survival schools, insurance companies, community advocacy groups, and Arizona's motoring public. The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking. If approval for rulemaking is received, the Department anticipates filing a Notice of Proposed Expedited Rulemaking to amend these rules as indicated under items 4 and 10 by November 27, 2023.
R17-4-407; R17-4-409.	On September 18, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to implement Laws 2015, Chapter 294, allowing issuance of driver and identification licenses that can be used for boarding federally regulated commercial aircraft, or to access restricted areas in federal facilities, nuclear power plants or military facilities. However, since the Department established the rule by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, Council staff determined that the Department's ability to continue collecting the fee was subject to the requirements of A.R.S. 41-1008(E) and (F), so the Department re-established the fee by Final Rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019. No further course of action is necessary for these Sections.

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 4

Section D

Rule Text

1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
   a. The Vehicle Identification Number,
   b. The Arizona vehicle license plate number,
   c. A copy of the Arizona registration,
   d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
   e. The date on which the Vehicle License Tax was paid, and
   f. The dates the rental vehicle was in and out of service.
2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
   a. The rental contract for each rental vehicle,
   b. The amount of surcharge collected,
   c. Chart of accounts,
   d. General ledger,
   e. Financial statements,
   f. Federal tax returns, and
   g. Monthly trial balance.
3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
   a. All applicable rental contracts; and
   b. The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.

D. Audits. The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at http://www.gao.gov/yellowbook or can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

1. The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
2. The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

R17-4-351. Special License Plate; Definition

For the purposes of R17-4-352, "special license plate" or "special plate" has the meaning prescribed in A.R.S. § 28-2401.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

R17-4-352. Duplicate Special License Plate; Fee

A. The Department shall charge and collect from a motor vehicle owner a one-time fee of $10 for each duplicate special license plate requested.

B. The Department shall charge and collect the current applicable U.S. Postal Service postage rate as provided in A.R.S. § 28-2151 and A.A.C. R17-1-204 to mail a duplicate special license plate to a motor vehicle owner.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

ARTICLE 4. DRIVER LICENSES

R17-4-401. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"Financial responsibility (accident) suspension" means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

"Gore area" is defined under A.R.S. § 28-644.

"Proof the vehicle was sold" means a written statement to the Department from an owner that includes the following:

The seller's name;

The VIN;

The sale date; and

The purchaser's name and address.

"Restricted permit" means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person's home and workplace,

During the person's work-related activities, or

Between the person's home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person's home and workplace;

During the person's work-related activities; or

Between the person's home and school.

"State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"SR22" means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

"Thirty-six-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

"Twelve-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

"Twenty-four-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

"VIN" or "vehicle identification number" is defined under A.R.S. § 13-4701(4).

"Withdrawal action" means a Department action that invalidates a person's Arizona driving privilege or a vehicle's Arizona registration, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension

A. An applicant for a restricted permit shall:
1. Have no withdrawal action other than the financial responsibility (accident) suspension;
2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;
3. Pay the $10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and
4. Pay the $25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;
5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and
6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).

B. In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:
1. Apply for an original or renew an Arizona driver license by:
   a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and
   b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or
2. Obtain a duplicate Arizona driver license by paying the $12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).

C. At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

Historical Note

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees

A. An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.

B. The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is $12 under A.R.S. §§ 28-3002(A) and 28-3165.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-404. Driver Point Assessment; Traffic Survival Schools

A. Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.

B. Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
2. Suspend the driver's Arizona driver license or driving privilege.

C. Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
   a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and

b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.

2. The Department shall record that a driver completed traffic survival school if:
   a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
   b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.

D. Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
1. Specify the period within which the driver may submit a hearing request to the Department, and
2. Specify the effective date of the suspension.

E. Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
1. Specify the length of the suspension as follows:
   a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
   b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
   c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
   d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
2. Specify the period within which the driver may submit a hearing request to the Department; and
3. Specify the effective date of the suspension.

Historical Note

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1) Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

Table 1. Driver Point Valuation

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.	4
A.R.S. § 28-701, reasonable and prudent speed.	3
A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.	3
Any other traffic regulation that governs a vehicle moving under its own power.	2

Historical Note

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

R17-4-405. Emergency Expired

Historical Note

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

R17-4-406. Minor's Application for Permit or License

A. For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
3. "Parent" means the natural or adoptive father or mother of a child.

B. Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.

C. Procedure when only one parent signs:
1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.

D. Procedure when both parents are deceased:
1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court

judgment, affidavits of close relatives of the child, or school records.
2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
3. An employer signing the application shall certify the person employs the minor on the date of application.
4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.

E. Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

R17-4-407. Travel-compliant Driver License or Travel-compliant Non-operating Identification License Application; Fee

A. A person seeking a travel-compliant driver license or travel-compliant identification license shall meet and comply with all:
1. State laws and rules applicable to every applicant who seeks issuance of any other driver license class, type, endorsement or non-operating identification license issued by the Department; and
2. Federal laws and regulations regarding the application and minimum documentation, verification, and card issuance requirements prescribed in the most recent edition of 6 CFR 37.11 for establishing satisfactory proof of a person's identity, date of birth, social security number, principal residence address of domicile in this state, and lawful status in the United States.

B. A person seeking a travel-compliant driver license or travel-compliant identification license shall:
1. Apply to the Department using an application form provided by the Department; and
2. Submit to the Department for authentication, satisfactory proof of the applicant's full legal name, date of birth, sex, social security number, principal residence address of domicile in this state, and that the applicant's presence in the United States is authorized under federal law. A list of all source documents the Department may accept as satisfactory proof under state and federal law is maintained by the Department on its website at www.azdot.gov.

C. An applicant for a travel-compliant driver license or travel-compliant identification license shall submit to the Department a fee of $25:
1. On original application, reinstatement, or renewal of any travel-compliant driver license class; or
2. On original application or renewal of a travel-compliant identification license.

D. A travel-compliant driver license or travel-compliant identification license issued by the Department, as prescribed under A.R.S. § 28-3175 and this Section, is:
1. Valid for a period of up to eight years;
2. Renewable for successive periods of up to eight years; and
3. Subject to all state and federal laws or restrictions requiring the issuance of a shorter expiration period (e.g., up to age 65, as provided under A.R.S. § 28-3171, or for a time period equal to the applicant's authorized stay in the United States, as provided under 6 CFR 37.21, etc.).

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Section repealed; new Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order

A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).

B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.

C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-409. Non-operating Identification License Application; Applicability; Fee

A. A person seeking a non-operating identification license, issued by the Department as prescribed under A.R.S. § 28-3165 and

this Section, shall apply to the Department using a form provided by the Department.

B. An applicant shall submit a $12 fee to the Department, on application for a non-operating identification license, unless the applicant is provided a specific statutory exemption from payment of the fee.

C. An applicant shall provide to the Department, on application for a non-operating identification license, satisfactory proof of the applicant's full legal name, date of birth, sex, principal residence address of domicile in this state, and evidence that the applicant's presence in the United States is authorized under federal law as listed by the Department on its website at www.azdot.gov.

D. A person seeking a travel-compliant identification license issued by the Department under A.R.S. § 28-3175, which is recognized by federal agencies as proof of identity for use when accessing federal facilities, boarding federally-regulated commercial aircraft, or entering nuclear power plants, shall apply to the Department as provided under R17-4-407.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Amended by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

R17-4-410. Voter Registration Through the Motor Vehicle Division

A. For purposes of this Section:
1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.

B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.

C. Subsection (B) applies to the following license transactions:
1. Initial licensee application;
2. License renewal;
3. Duplicate driver license; or
4. Licensee personal information update.

D. MVD shall transfer the voter registration forms and the data collected under this Section by:
1. Mailing the completed hardcopy forms to the appropriate county recorder; and
2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

E. MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee

A. In addition to the requirements prescribed in A.R.S. § 28-3158, an person applying for a special ignition interlock restricted driver license shall:
1. If the person is suspended for a first offense of A.R.S. § 28-1321:
   a. Complete at least 90 consecutive days of the period of the suspension, and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
   a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
   b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
   c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
   a. Comply with the restrictions in subsection (C), and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.

B. The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).

C. A person applying for a special ignition interlock restricted driver license shall pay the following fees:

1.	Age 50 or older	$10.00
2.	Age 45 – 49	$15.00
3.	Age 40 – 44	$20.00
4.	Age 39 or younger	$25.00

D. A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor

vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).

E. Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:
1. Date installed;
2. Person's full name;
3. Person's date of birth;
4. Person's customer or driver license number;
5. Installer and manufacturer name;
6. Installer fax number;
7. Date report interpreted;
8. Report period;
9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
12. Any other information required by the Director.

F. A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions

A. Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:
1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.

B. Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.

C. Burden of proof and presumptions.
1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
2. The person may be rebut the presumption by a showing of clear and convincing evidence that the person whose special ignition interlock restricted driver license being extended, was not the person in control of the vehicle or attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

D. Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-413. Lifetime Disqualification Reinstatement

A. Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
"CDL" means Commercial Driver License.
"Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
"Permanently disqualified" means the individual will never be able to obtain a commercial driver license.

B. Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
2. The individual:
   a. Is otherwise eligible for licensure.
   b. Has continuously been eligible for a driver license during the most recent 10-year period.
   c. Has not previously reinstated CDL privileges for another lifetime disqualification.

d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
   i. Driving while under the influence of alcohol or a controlled substance.
   ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
   iii. Refusal to submit to a blood alcohol concentration test.
   iv. Leaving the scene of an accident.
   v. Using a vehicle in the commission of a felony.
   vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or her commercial driving privileges are canceled, disqualified, suspended, or revoked.
   vii. Causing a fatality through the negligent operation of a commercial motor vehicle.

C. Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.

D. Permanent disqualification.
1. An individual who reinstated his or her commercial driving privilege in accordance with this Section and who is subsequently given a lifetime disqualification under A.R.S. § 28-3312 is permanently disqualified.
2. An individual convicted of using any vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance is permanently disqualified.
3. An individual who more than once refuses a test in violation of A.R.S. § 28-1321 if the refusals involve more than one incident is permanently disqualified.
4. An individual who more than once is convicted of violating A.R.S. § 28, Chapter 4, Article 3 is permanently disqualified.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing

A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.

B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
   a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
   b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who currently possesses a valid Arizona commercial driver license.
3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.

C. Required Action. In compliance with 49 CFR 384.210 and 384.231:
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
3. The Department shall send written notification of the action to the person describing the action taken by the Department.

D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
   a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
   b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported

driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

Historical Note
Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

R17-4-415. Reserved

R17-4-416. Reserved

R17-4-417. Reserved

R17-4-418. Reserved

R17-4-419. Reserved

R17-4-420. Recodified

Historical Note
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-421. Recodified

Historical Note
Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-422. Recodified

Historical Note
Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-423. Recodified

Historical Note
Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-424. Recodified

Historical Note
Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-425. Recodified

Historical Note
Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-426. Recodified

Historical Note
Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-427. Recodified

Historical Note
Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-428. Recodified

Historical Note
New Section recodified from A.A.C. R17-3-403 at 7 A.A.R. 1260, effective February 20, 2001 (Supp. 01-1). Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-429. Reserved

R17-4-430. Reserved

R17-4-431. Reserved

R17-4-432. Reserved

R17-4-433. Reserved

R17-4-434. Reserved

R17-4-435. Recodified

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4) Emergency expired. Emergency

amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.01. Recodified

Historical Note

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.02. Recodified

Historical Note

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.03. Recodified

Historical Note

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.04. Recodified

Historical Note

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.05. Recodified

Historical Note

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.06. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-436. Recodified

Historical Note

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-437. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.01. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.02. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.03. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

Appendix A. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.04. Emergency Expired

Historical Note
Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-438. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-439. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-440. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-441. Reserved

R17-4-442. Reserved

R17-4-443. Reserved

R17-4-444. Repealed

Historical Note
Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emergency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

R17-4-445. Recodified

Historical Note
Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-446. Recodified

Historical Note
Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-447. Recodified

Historical Note
Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-448. Recodified

Historical Note
Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-449. Reserved

R17-4-450. Repealed

Historical Note
New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-451. Repealed

Historical Note
New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-452. Repealed

Historical Note
New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-453. Repealed

Historical Note
New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-454. Repealed

Historical Note
New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-455. Repealed

Historical Note
New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-456. Repealed

Historical Note
New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-457. Repealed

Historical Note
New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-458. Repealed

Historical Note
New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-459. Repealed

Historical Note
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-460. Repealed

Historical Note
New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-461. Repealed

Historical Note
New Section recodified from R17-4-422 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-462. Repealed

Historical Note
New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-463. Repealed

Historical Note
New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-464. Repealed

Historical Note
New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-465. Repealed

Historical Note
New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-466. Repealed

Historical Note
New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-467. Repealed

Historical Note
New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

ARTICLE 5. SAFETY

R17-4-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, and 28-3005, in this Article, unless otherwise specified:

"Adaptation" means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

"Applicant" means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

"Application" means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

"Aura" means a sensation experienced before the onset of a neurological disorder.

"Commercial driver license physical qualifications" means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under A.A.C. R17-5-202 and R17-5-204.

"Disqualifying medical condition" means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

"Evaluation" means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

"Examination" means testing or evaluating an applicant's or licensee's:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

"Functional ability" means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

"Licensee" means a person issued a driver license by this state.

"Licensing action" means an action by the Department to:

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Section E

Statutory Authority, Definitions, and Other Applicable Rules

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-401 through R17-4-414

(All Sections, Tables, and Illustrations)

A.R.S. § 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.

A.R.S. § 28-7045. Director; state highway and route use; rules.

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

Definitions

A.R.S. § 13-4701. Definitions

In this chapter, unless the context otherwise requires:

1. "Chop shop" means any building, lot or other premises in which one or more persons alters, destroys, disassembles, dismantles, reassembles or stores at least one motor vehicle or watercraft or two or more motor vehicle or watercraft parts from at least one vehicle or watercraft that the person or persons knows were obtained by theft, fraud or conspiracy to defraud with the intent to:
   (a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity of the motor vehicles or motor vehicle parts, including the vehicle identification number for the purpose of misrepresenting or preventing the identification of the motor vehicles or motor vehicle parts.
   (b) Sell or dispose of the motor vehicles or motor vehicle parts.
2. "Motor vehicle" means any self-propelled vehicle.
3. "Unidentifiable" means that specially trained investigative personnel who are experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques cannot establish the uniqueness of a motor vehicle or motor vehicle part.
4. "Vehicle identification number" means the number that the manufacturer or the United States or a state department of transportation assigns to a motor vehicle for the purpose of identifying the motor vehicle or a major component part of the motor vehicle. Vehicle identification number includes any combination of numbers or letters.
5. "Watercraft" has the same meaning as prescribed in section 5-301.

A.R.S. § 16-111. Definitions

For the purposes of this article, unless the context otherwise requires:

1. "Applicant" means a person who applies for a driver's license.
2. "Driver's license" means any class of driver's license or a nonoperating identification license issued by the motor vehicle division of the department of transportation.
3. "Driver's license examiner" means an employee of the motor vehicle division of the department of transportation who is authorized to examine applicants for driver's licenses.

A.R.S. § 28-101. Definitions.

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
   (a) The number of grams of alcohol per one hundred milliliters of blood.
   (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:

(a) A motor vehicle that satisfies all of the following:
(i) Is designed primarily for recreational nonhighway all-terrain travel.
(ii) Is fifty or fewer inches in width.
(iii) Has an unladen weight of one thousand two hundred pounds or less.
(iv) Travels on three or more nonhighway tires.
(v) Is operated on a public highway.
(b) A recreational off-highway vehicle that satisfies all of the following:
(i) Is designed primarily for recreational nonhighway all-terrain travel.
(ii) Is eighty or fewer inches in width.
(iii) Has an unladen weight of two thousand five hundred pounds or less.
(iv) Travels on four or more nonhighway tires.
(v) Has a steering wheel for steering control.
(vi) Has a rollover protective structure.
(vii) Has an occupant retention system.

4. "Authorized emergency vehicle" means any of the following:
(a) A fire department vehicle.
(b) A police vehicle.
(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.
7. "Automotive recycler" means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.
8. "Autonomous vehicle" means a motor vehicle that is equipped with an automated driving system.
9. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
10. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

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

11. "Board" means the transportation board.
12. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
13. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
14. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
15. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
16. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
17. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
18. "Conviction" means:
    (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
    (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
    (c) A plea of guilty or no contest accepted by the court.
    (d) The payment of a fine or court costs.
19. "County highway" means a public road that is constructed and maintained by a county.
20. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
21. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
22. "Digital network or software application" has the same meaning prescribed in section 28-9551.
23. "Director" means the director of the department of transportation.
24. "Drive" means to operate or be in actual physical control of a motor vehicle.
25. "Driver" means a person who drives or is in actual physical control of a vehicle.
26. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
27. "Dynamic driving task":
    (a) Means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic.

(b) Includes:

(i) Lateral vehicle motion control by steering.

(ii) Longitudinal motion control by acceleration and deceleration.

(iii) Monitoring the driving environment by object and event detection, recognition, classification and response preparation.

(iv) Object and event response execution.

(v) Maneuver planning.

(vi) Enhancing conspicuity by lighting, signaling and gesturing.

(c) Does not include strategic functions such as trip scheduling and selecting destinations and waypoints.

28. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:

(a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.

29. "Electric miniature scooter" means a device that:

(a) Weighs less than thirty pounds.

(b) Has two or three wheels.

(c) Has handlebars.

(d) Has a floorboard on which a person may stand while riding.

(e) Is powered by an electric motor or human power, or both.

(f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

30. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

31. "Electric standup scooter":

(a) Means a device that:

(i) Weighs less than seventy-five pounds.

(ii) Has two or three wheels.

(iii) Has handlebars.

(iv) Has a floorboard on which a person may stand while riding.

(v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

32. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

33. "Farm" means any lands primarily used for agriculture production.

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

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

36. "Fully autonomous vehicle" means an autonomous vehicle that is equipped with an automated driving system designed to function as a level four or five system under SAE J3016 and that may be designed to function either:

(a) Solely by use of the automated driving system.

(b) By a human driver when the automated driving system is not engaged.

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

38. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

39. "Human driver" means a natural person in the vehicle who performs in real time all or part of the dynamic driving task or who achieves a minimal risk condition for the vehicle.

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

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

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

41. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

42. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

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

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

45. "Minimal risk condition":

(a) Means a condition to which a human driver or an automated driving system may bring a vehicle in order to reduce the risk of a crash when a given trip cannot or should not be completed.

(b) Includes bringing the vehicle to a complete stop.

46. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

47. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

48. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.
49. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:
    (a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.
    (b) The vehicle has at least four wheels in contact with the ground.
    (c) The vehicle seats at least eight passengers, including the driver.
    (d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.
    (e) The vehicle is a commercial motor vehicle as defined in section 28-5201.
    (f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.
    (g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.
    (h) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
50. "Motor vehicle":
    (a) Means either:
        (i) A self-propelled vehicle.
        (ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.
    (b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:
        (i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.
        (ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
51. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine

powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

52. "Neighborhood electric shuttle":
    (a) Means a self-propelled electrically powered motor vehicle to which all of the following apply:
        (i) The vehicle is emission free.
        (ii) The vehicle has at least four wheels in contact with the ground.
        (iii) The vehicle is capable of transporting at least eight passengers, including the driver.
        (iv) The vehicle is a commercial motor vehicle as defined in section 28-5201.
        (v) The vehicle is a vehicle for hire as defined in section 28-9501 and operates under a vehicle for hire company permit issued pursuant to section 28-9503.
        (vi) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
    (b) Includes a vehicle that meets the standards prescribed in subdivision (a) of this paragraph and that has been modified after market and not by the manufacturer to transport up to fifteen passengers, including the driver.
53. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:
    (a) The vehicle is emission free.
    (b) The vehicle has at least four wheels in contact with the ground.
    (c) The vehicle complies with the definition and standards for low-speed vehicles, unless excepted or exempted under federal law, set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
54. "Neighborhood occupantless electric vehicle" means a neighborhood electric vehicle that is not designed, intended or marketed for human occupancy.
55. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.
56. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.
57. "Operational design domain":
    (a) Means operating conditions under which a given automated driving system is specifically designed to function.
    (b) Includes roadway types, speed range, environmental conditions, such as weather or time of day, and other domain constraints.
58. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

59. "Owner" means:
    (a) A person who holds the legal title of a vehicle.
    (b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
    (c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.
60. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
61. "Personal delivery device":
    (a) Means a device that is both of the following:
        (i) Manufactured for transporting cargo and goods in an area described in section 28-1225.
        (ii) Equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.
    (b) Does not include a personal mobile cargo carrying device.
62. "Personal mobile cargo carrying device" means an electronically powered device that:
    (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
    (b) Weighs less than eighty pounds, excluding cargo.
    (c) Operates at a maximum speed of twelve miles per hour.
    (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
    (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.
63. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.
64. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.
65. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the

removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

66. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.
67. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.
68. "SAE J3016" means surface transportation recommended practice J3016 taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles published by SAE international in June 2018.
69. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:
    (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
    (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.
70. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.
71. "Scrap vehicle" has the same meaning prescribed in section 44-1641.
72. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
73. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.
74. "State" means a state of the United States and the District of Columbia.
75. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.
76. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.
77. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.
78. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

79. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
80. "Traffic survival school" means a school that is licensed pursuant to chapter 8, article 7.1 of this title and that offers educational sessions that are designed to improve the safety and habits of drivers and that are approved by the department.
81. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
82. "Transportation network company" has the same meaning prescribed in section 28-9551.
83. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.
84. "Transportation network service" has the same meaning prescribed in section 28-9551.
85. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.
86. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
87. "Vehicle":
    (a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.
    (b) Does not include:
        (i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.
        (ii) Devices used exclusively on stationary rails or tracks.
        (iii) Personal delivery devices.
        (iv) Scrap vehicles.
        (v) Personal mobile cargo carrying devices.
88. "Vehicle transporter" means either:
    (a) A truck tractor capable of carrying a load and drawing a semitrailer.
    (b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-601. Definitions.

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise, that is a commercial motor vehicle as defined in section 28-5201 and that is not exempt from gross weight fees as prescribed in section 28-5432, subsection B.
2. "Controlled access highway" means a highway, street or roadway to or from which owners or occupants of abutting lands and other persons have no legal right of access except at such points only and in the manner determined by the public authority that has jurisdiction over the highway, street or roadway.
3. "Crosswalk" means:
   (a) That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.
   (b) Any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface.
4. "Escort vehicle" means a vehicle that is required pursuant to rules adopted by the department to escort motor vehicles or combinations of vehicles that require issuance of a permit pursuant to article 18 or 19 of this chapter for operation on the highways of this state.
5. "Explosives" means any chemical compound, mixture or device that is commonly used or intended for the purpose of producing an explosion and that is defined in 49 Code of Federal Regulations part 173.
6. "Flammable liquid" means any liquid that has a flash point of less than one hundred degrees Fahrenheit and that is defined in 49 Code of Federal Regulations section 173.120.
7. "Gross weight" means the weight of a vehicle without a load plus the weight of any load on the vehicle.
8. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict. If a highway includes two roadways thirty or more feet apart, each crossing of each roadway of the divided highway by an intersecting highway is a separate intersection. If the intersecting highway also includes two roadways thirty or more feet apart, each crossing of two roadways of the highways is a separate intersection.
9. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state that pertain to the licensing of persons to operate motor vehicles.
10. "Low emission and energy efficient vehicle" means a vehicle that has been certified by the United States environmental protection agency administrator in accordance with 23 United States Code section 166 or that is part of a federally approved pilot program.
11. "Motorized wheelchair" means any self-propelled wheelchair that is used by a person for mobility.

12. "Official traffic control device" means any sign, signal, marking or device that is not inconsistent with this chapter and that is placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.
13. "Park", if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.
14. "Photo enforcement system" means a device substantially consisting of a radar unit or sensor linked to a camera or other recording device that produces one or more photographs, microphotographs, videotapes or digital or other recorded images of a vehicle's license plate for the purpose of identifying violators of articles 3 and 6 of this chapter.
15. "Pneumatic tire" means a tire in which compressed air is designed to support the load.
16. "Pole trailer" means a vehicle that is all of the following:
    (a) Without motive power.
    (b) Designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle.
    (c) Used ordinarily for transporting long or irregularly shaped loads such as poles, pipes or structural members capable generally of sustaining themselves as beams between the supporting connections.
17. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic rules or other offenses.
18. "Private road or driveway" means a way or place that is in private ownership and that is used for vehicular travel by the owner and those persons who have express or implied permission from the owner but not by other persons.
19. "Railroad" means a carrier of persons or property on cars operated on stationary rails.
20. "Railroad sign or signal" means a sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.
21. "Railroad train" means a steam engine or any electric or other motor that is with or without cars coupled to the steam engine or electric or other motor and that is operated on rails.
22. "Roadway" means that portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.
23. "Safety zone" means the area or space that is both:
    (a) Officially set apart within a roadway for the exclusive use of pedestrians.
    (b) Protected or either marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
24. "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for the use of pedestrians.
25. "Stop", if required, means complete cessation from movement.

26. "Stop, stopping or standing", if prohibited, means any stopping or standing of an occupied or unoccupied vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control sign or signal.
27. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.
28. "Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel.
29. "Traffic control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
30. "Truck" means a motor vehicle that is designed, used or maintained primarily for the transportation of property.

A.R.S. § 28-644. Obedience to and required traffic control devices

A. Unless otherwise directed by a traffic or police officer and subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter, the driver of a vehicle shall:
   1. Obey the instructions of an official traffic control device applicable to the driver that is placed in accordance with this chapter.
   2. Not drive over or across or park in any part of a gore area. This paragraph does not apply to the driver of a vehicle that is disabled while on the paved or main traveled portion of a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position. For the purposes of this paragraph, "gore area" means the area that is between a through roadway and an entrance ramp or exit ramp and that is defined by two wide solid white lines that guide traffic entering or exiting a roadway. Gore area does not include a safety zone.

B. Any provision of this chapter that requires signs shall not be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. If a particular section of law does not state that signs are required, that section is effective even though no signs are erected or in place.

A.R.S. § 28-1301. Definitions

In this chapter, unless the context otherwise requires:

1. "Certified ignition interlock device" means an ignition interlock device that is certified pursuant to article 5 of this chapter.
2. "Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:
   (a) The bump start of a motor vehicle with a certified ignition interlock device.
   (b) The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle.

(c) The introduction of an intentionally contaminated or a filtered breath sample.

(d) The intentional disruption or blocking of a digital image identification device.

(e) The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body.

(f) Operating a motor vehicle without a properly functioning certified ignition interlock device.

(g) Allowing a person other than the person who is required to maintain a functioning certified ignition interlock device pursuant to this chapter to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code sections 5101 through 5127) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

4. "Education" means a program in which a person participates in at least sixteen hours of classroom instruction relating to alcohol or other drugs.

5. "Ignition interlock device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the national highway traffic safety administration specifications, that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start the motor vehicle by using its ignition system and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level.

6. "Ignition interlock service provider" means a person who is an authorized representative of a manufacturer and who is under contract with the department to install or oversee the installation of ignition interlock devices by the provider's authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

7. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

8. "Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction or production of an ignition interlock device and that is certified by the department to offer ignition interlock devices for installation in motor vehicles in this state.
9. "Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.
10. "Screening" means a preliminary interview and assessment of an offender to determine if the offender requires alcohol or other drug education or treatment.
11. "Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the certified ignition interlock device from its power source that allows the operator to start the engine without taking and passing the requisite breath test.
12. "Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, repair, calibrate, service or remove certified ignition interlock devices.
13. "Treatment" means a program consisting of at least twenty hours of participation in a group setting dealing with alcohol or other drugs in addition to the sixteen hours of education.

A.R.S. § 28-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.
2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.
3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:
   (a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
   (b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.
   (c) A bus.
   (d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.
4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:
   (a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.

(b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.

(c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.

5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.
6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.
7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.
8. "Foreign" means outside the United States.
9. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.
10. "Judgment" means a final judgment and any of the following:
    (a) The finding by a court that an individual is responsible for a civil traffic violation.
    (b) An individual's admission of responsibility for a civil traffic violation.
    (c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
    (d) A default judgment entered by a court pursuant to section 28-1596.
11. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.
12. "Nondomiciled commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.
13. "Original applicant" means any of the following:
    (a) An applicant who has never been licensed or cannot provide evidence of licensing.
    (b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.
    (c) An applicant who has a license from a foreign country.
14. "Revocation" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.
15. "State of domicile" means the state or jurisdiction where a person has the person's true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.

16. "Suspension" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.
17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

A.R.S. § 8-513. Participation in activities; contact with relatives; placement with siblings; independent living programs

A. A child may participate in activities and functions generally accepted as usual and normal for children of the child's age group if permission is granted as follows:
   1. If the activity by law requires a license, the agency or division that placed the child may give permission on request of the foster parent.
   2. If the activity includes the child leaving the jurisdiction of the court for a period not to exceed thirty days, the agency or division that placed the child may give permission on request of the foster parent.
   3. If the activity is one which is associated with a school or organization not prohibited by rule of the division, the foster parents of the child may give permission.

B. The state shall indemnify and hold harmless the agency or foster parents for liability that may be incurred or alleged as a result of giving permission pursuant to subsection A if it is reasonably and prudently given. The state shall provide the defense of any action alleging such liability.

C. A child placed in foster care has the right to maintain contact with friends and relatives unless the court has determined that contact is not in the child's best interests as determined pursuant to a court hearing.

D. If a child has been removed from the child's home and placed in out-of-home placement, guardianship or adoptive placement, the department shall make reasonable efforts to place that child with the child's siblings or, if that is not possible, to maintain frequent visitation or other ongoing contact between the child and the child's siblings unless a court determines that either the placement or the visitation or contact would be contrary to the child's or a sibling's safety or well-being.

E. The out-of-home provider for a youth who is at least sixteen years of age shall work with independent living programs that are focused on career, education and future development planning to assist the youth in meeting program goals.

A.R.S. § 16-112. Driver license voter registration

A. Every person who is applying for a driver license or renewal and who is otherwise qualified to register to vote shall, at the same time and place, be permitted to register to vote by providing the information prescribed by section 16-152. The method used to register voters shall require only the minimum information necessary to prevent duplicate registrations, to enable elections officials to determine voter eligibility and to administer voter registration and election laws. A registration form shall be included for a person who is applying for a driver license renewal by mail. On completion of a form that contains at least the information prescribed by section 16-121.01, subsection A and that may contain the information prescribed by section 16-152 and on receipt of that form by the county recorder from the department of transportation as prescribed by subsection D of this section, the applicant is presumed to be properly registered to vote. That presumption may be rebutted as provided in section 16-121.01, subsection B.

B. The director of the department of transportation and the secretary of state shall consult at least every two years regarding voter registration at driver license offices. The director of the department of transportation and the secretary of state shall, after consultation with all county recorders, adopt rules to implement a system permitting driver license applicants to register to vote at the same time and place as they apply for driver licenses. Such rules shall:
   1. Bring the license application and voter registration application forms into substantial conformity.
   2. Permit the transfer of driver license applications, including renewal and change of address, and voter registration information from the department of transportation to the voter registration rolls.
   3. Respect all rules and statutes of this state concerning the confidentiality of driver license application information.
   4. Provide for the manual or electronic generation and transmittal of voter registrations and provide for electronic generation of changes in voter registration information, including address, in conformity with the confidentiality requirements of the national voter registration act of 1993 (P.L. 103-31; 107 Stat. 77; 42 United States Code section 394).

C. The department of transportation shall provide to applicants a statement that provides each eligibility requirement for voting, including citizenship, an attestation that the applicant meets each requirement, for the signature of the applicant under penalty of perjury and, in print that is identical to that used in the attestation, the following:
   1. A description of the penalties provided by law for the submission of a false voter registration application.
   2. A statement that if an applicant declines to register to vote the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
   3. A statement that if an applicant does register to vote the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

D. The department of transportation shall return or mail completed registrations to the county recorder of the county in which the applicant resides within five days after receipt of a completed registration.

A.R.S. § 28-1381. Driving or actual physical control while under the influence; trial by jury; presumptions; admissible evidence; sentencing; classification

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:
   1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.
   2. If the person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
   3. While there is any drug defined in section 13-3401 or its metabolite in the person's body.

4. If the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in section 28-3001 and the person has an alcohol concentration of 0.04 or more.

B. It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state.

C. A person who is convicted of a violation of this section is guilty of a class 1 misdemeanor.

D. A person using a drug as prescribed by a medical practitioner who is licensed pursuant to title 32 and who is authorized to prescribe the drug is not guilty of violating subsection A, paragraph 3 of this section.

E. In any prosecution for a violation of this section, the state shall allege, for the purpose of classification and sentencing pursuant to this section, all prior convictions of violating this section, section 28-1382 or section 28-1383 occurring within the past thirty-six months, unless there is an insufficient legal or factual basis to do so.

F. At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.

G. In a trial, action or proceeding for a violation of this section or section 28-1383 other than a trial, action or proceeding involving driving or being in actual physical control of a commercial vehicle, the defendant's alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:

1. If there was at that time 0.05 or less alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was not under the influence of intoxicating liquor.
2. If there was at that time in excess of 0.05 but less than 0.08 alcohol concentration in the defendant's blood, breath or other bodily substance, that fact shall not give rise to a presumption that the defendant was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
3. If there was at that time 0.08 or more alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was under the influence of intoxicating liquor.

H. Subsection G of this section does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

I. A person who is convicted of a violation of this section:

1. Shall be sentenced to serve not less than ten consecutive days in jail and is not eligible for probation or suspension of execution of sentence unless the entire sentence is served.
2. Shall pay a fine of not less than $250.
3. May be ordered by a court to perform community restitution.
4. Shall pay an additional assessment of $500 to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

5. Shall pay an additional assessment of $500 to be deposited by the state treasurer in the public safety equipment fund established by section 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
6. If the violation involved intoxicating liquor, shall be required by the department, on report of the conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.
7. Shall be required by the department to attend and successfully complete an approved traffic survival school course.

J. Notwithstanding subsection I, paragraph 1 of this section, at the time of sentencing the judge may suspend all but one day of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

K. If within a period of eighty-four months a person is convicted of a second violation of this section or is convicted of a violation of this section and has previously been convicted of a violation of section 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of this section or section 28-1382 or 28-1383, the person:
1. Shall be sentenced to serve not less than ninety days in jail, thirty days of which shall be served consecutively, and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served.
2. Shall pay a fine of not less than $500.
3. Shall be ordered by a court to perform at least thirty hours of community restitution.
4. Shall have the person's driving privilege revoked for one year. The court shall report the conviction to the department. On receipt of the report, the department shall revoke the person's driving privilege and, if the violation involved intoxicating liquor, shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to

reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

5. Shall pay an additional assessment of $1,250 to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
6. Shall pay an additional assessment of $1,250 to be deposited by the state treasurer in the public safety equipment fund established by section 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
7. Shall be required by the department to attend and successfully complete an approved traffic survival school course.

L. Notwithstanding subsection K, paragraph 1 of this section, at the time of sentencing, the judge may suspend all but thirty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

M. In applying the eighty-four month provision of subsection K of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

N. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

O. After completing forty-five days of the revocation period prescribed by subsection K of this section, a person whose driving privilege is revoked for a violation of this section and who is sentenced pursuant to subsection K of this section is eligible for a special ignition interlock restricted driver license pursuant to section 28-1401.

P. The court may order a person who is convicted of a violation of this section that does not involve intoxicating liquor to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. On receipt of the report of conviction and certified ignition interlock device requirement, the department shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving

privilege. The person who operates a motor vehicle with a certified ignition interlock device under this subsection shall comply with article 5 of this chapter.

A.R.S. § 28-1385. Administrative license suspension for driving under the influence or for homicide or assault involving a motor vehicle; report; hearing; summary review; ignition interlock device requirement

A. A law enforcement officer shall forward to the department a certified report as prescribed in subsection B of this section, subject to the penalty for perjury prescribed by section 28-1561, if both of the following occur:
   1. The officer arrests a person for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   2. The person submits to a test of the person's blood, breath, urine or other bodily substance that is allowed by section 28-1321 or any other law or a sample of blood is obtained pursuant to section 28-1388 and the results are either not available or the results indicate any of the following:
      (a) 0.08 or more alcohol concentration in the person's blood or breath.
      (b) 0.04 or more alcohol concentration in the person's blood or breath if the person was driving or in actual physical control of a commercial motor vehicle.
      (c) Any drug defined in section 13-3401 or its metabolite is in the person's body except if the person possesses a valid prescription for the drug.

B. The officer shall make the certified report required by subsection A of this section on forms supplied or approved by the department. The report shall state information that is relevant to the enforcement action, including:
   1. Information that adequately identifies the arrested person.
   2. A statement of the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle in violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   3. A statement that the person was arrested for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   4. A report of the results of the blood or breath alcohol test that was administered, if the results are available.

C. If a breath test is administered, a law enforcement agency shall forward the certified report that is required by subsection A of this section to the department within thirty days after the arrest occurs. If a sample of blood, urine or other bodily substance is obtained, the law enforcement agency shall forward the certified report that is required by subsection A of this section to the department within thirty days after the date the report of the analysis is provided to the law enforcement agency. If a report is not forwarded to the department within the time limit prescribed by this subsection, the report is inadmissible in a hearing held pursuant to this section

unless the violation listed in subsection A of this section resulted in death or serious physical injury. For the purposes of this subsection, "serious physical injury" has the same meaning prescribed in section 13-105.

D. The officer shall also serve an order of suspension on the person on behalf of the department. The order of suspension:
   1. Is effective thirty days after the date it is served.
   2. Shall require the immediate surrender of any license or permit to drive that is issued by this state and that is in the possession or control of the person.
   3. Shall contain information concerning the right to a summary review and hearing, including information concerning the hearing as required by section 28-1321, subsections G and H.
   4. Shall be accompanied by printed forms that are ready to mail to the department, that the person may fill out and sign to indicate the person's desire for a hearing or summary review and that advise the person that the person may alternatively submit an online request for a hearing or summary review.
   5. Shall be entered on the department's records on receipt of the report by the officer and a copy of the order of suspension.
   6. Shall inform the person that the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege may be issued or reinstated following the period of suspension or issuance of a special ignition interlock restricted driver license only if the person completes alcohol or other drug screening.
   7. Shall contain information on alcohol or other drug education and treatment programs that are provided by a facility approved by the department of health services.

E. If the blood test result is unavailable at the time the test is administered, the result shall be forwarded to the department before the hearing held pursuant to this section in a form prescribed by the director.

F. If the license or permit is not surrendered pursuant to subsection D of this section, the officer shall state the reason for the nonsurrender. If a valid license or permit is surrendered, the officer shall issue a temporary driving permit that is valid for thirty days. The officer shall forward a copy of the completed order of suspension and a copy of any completed temporary permit to the department within five days after the issuance of the order of suspension along with the report. The law enforcement agency may do either of the following with a valid license or permit that is surrendered pursuant to this section:
   1. In compliance with sections 41-151.15 and 41-151.19, destroy the license or permit.
   2. Forward the license or permit to the department within five days after the issuance of the notice of suspension.

G. The department shall suspend the affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege for not less than ninety consecutive days from that date. If the person is otherwise qualified, the department may reinstate the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege following the period of suspension only if the violator completes alcohol or other drug screening.

H. Notwithstanding subsections A, B, C, D, E, F and G of this section and except as provided in subsection I of this section, the department shall suspend the driving privileges of the person described in subsection A of this section for at least thirty consecutive days and shall restrict the person's driving privileges as prescribed in section 28-144 for at least sixty consecutive additional days if the person:

1. Did not cause death or serious physical injury as defined in section 13-105 to another person during the course of conduct out of which the current action arose.
2. Has not been convicted of a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four months of the date of commission of the acts out of which the current action arose. The dates of commission of the acts are the determining factor in applying the eighty-four month provision.
3. Provides satisfactory evidence to the department of the person's completion of alcohol or other drug screening that is ordered by the department. If the person does not complete alcohol or other drug screening, the department may impose a ninety day suspension pursuant to this section.

I. In lieu of a driving privilege suspension pursuant to subsection H of this section, on a person's request, the department shall issue a special ignition interlock restricted driver license to the person if the requirements set forth in subsection H, paragraphs 1, 2 and 3 are met.

J. Notwithstanding section 28-1401, the department may issue a special ignition interlock restricted driver license to a person for an offense described in subsection A of this section. A person who applies for and who is issued a special ignition interlock restricted driver license pursuant to this subsection agrees to the administrative action taken by the department against the person's license. Once the department issues a special ignition interlock restricted driver license pursuant to this subsection, the person waives any right to an administrative hearing contesting the administrative action against the person's license pursuant to this section or section 28-1321.

K. If the officer does not serve an order of suspension pursuant to subsection D of this section and if the department does not receive the report of the results of the blood or breath alcohol test pursuant to subsection B, paragraph 4 of this section, but subsequently receives the results and the results indicate 0.08 or more alcohol concentration in the person's blood or breath, a blood or breath alcohol concentration of 0.04 or more and the person was driving or in actual physical control of a commercial motor vehicle or any drug defined in section 13-3401 or its metabolite in the person's body and the person does not possess a valid prescription for the drug, the department shall notify the person named in the report in writing sent by mail that thirty days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege. The notice shall also state that the department will provide an opportunity for a hearing and summary review if the person requests a hearing or review in writing and the request is received by the department within thirty days after the notice is sent.

L. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered license or permit to the person but may issue temporary permits to drive that expire not later than when the department has made its final decision. If the person is a resident without a license or permit

or has an expired license or permit, the department may allow the person to apply for a restricted license or permit. If the department determines the person is otherwise entitled to the restricted license or permit, the department shall issue, but retain, the license or permit, subject to this section. All hearings requested under this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306.

M. For the purposes of this section, the scope of the hearing shall include only the following issues:
   1. Whether the officer had reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor as prescribed in section 28-1381 or drugs.
   2. Whether the person was placed under arrest for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   3. Whether a test was taken, the results of which indicated any of the following:
      (a) An alcohol concentration in the person's blood or breath at the time the test was administered of either:
         (i) 0.08 or more.
         (ii) 0.04 or more if the person was driving or in actual physical control of a commercial motor vehicle.
      (b) Any drug defined in section 13-3401 or its metabolite in the person's body except if the person possesses a valid prescription for the drug.
   4. Whether the testing method used was valid and reliable.
   5. Whether the test results were accurately evaluated.

N. The results of the blood or breath alcohol test shall be admitted on establishing the requirements in section 28-1323 or 28-1326.

O. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective thirty days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny the issuance of a license or permit to the person for not less than ninety consecutive days. The department may reinstate the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege following the period of suspension only if the violator completes alcohol or other drug screening.

P. A person may request a summary review of an order issued pursuant to this section instead of a hearing at any time before the effective date of the order. A timely request for summary review stays the suspension until a decision is issued. The person shall submit the request in writing to the department together with any written explanation as to why the department should not suspend the driving privilege. The department shall review all reports submitted by the officer and any written explanation submitted by the person and shall determine if the order of suspension should be sustained or voided. The department shall not hold a hearing, and the review is not subject to title 41, chapter 6. The department shall notify the person of its decision.

Q. If the suspension or determination that there should be a denial of issuance is not sustained after a hearing or review, the ruling is not admissible in and does not have any effect on any civil or criminal court proceeding.

R. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the department shall give information either in writing or by electronic means of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

A.R.S. § 28-1401. Special ignition interlock restricted driver licenses; application fee

A. A person whose class D or class G license has been suspended pursuant to section 28-1385 or suspended or revoked for a first refusal pursuant to section 28-1321, a second violation of section 28-1381 or 28-1382 or a first violation of section 28-1383, subsection A, paragraph 3 may apply to the department for a special ignition interlock restricted driver license that allows the person to operate a motor vehicle during the period of suspension or revocation subject to the restrictions of the certified ignition interlock device requirements prescribed in article 5 of this chapter if the person's privilege to operate a motor vehicle has been restricted, suspended or revoked and the offense involved only alcohol or, if the person's alcohol concentration is 0.08 or more, a combination of drugs and alcohol pursuant to any of the following:

1. Section 28-1321, if the person meets the criteria of section 28-1321, subsection P.
2. Section 28-1381, if the person meets the criteria of section 28-1381, subsection O and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.
3. Section 28-1382, if the person meets the criteria of section 28-1382, subsection H and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.
4. Section 28-1383, if the person meets the criteria of section 28-1383, subsection L and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.
5. Section 28-1385, if the person meets the criteria of section 28-1385, subsection H.

B. An applicant for a special ignition interlock restricted driver license shall pay an application fee in an amount to be determined by the director.

C. The department shall issue a special ignition interlock restricted driver license during the period of a court-ordered restriction pursuant to sections 28-3320 and 28-3322 subject to the certified ignition interlock requirements prescribed in article 5 of this chapter.

D. If the department issues a special ignition interlock restricted driver license, the department shall not delete a suspension or revocation from its records.

A.R.S. § 28-1402. Issuance of special ignition interlock restricted driver license

A. On application pursuant to section 28-1401, subsection A the department may, and pursuant to section 28-1401, subsection C the department shall, issue a special ignition interlock restricted driver license that only

allows a person whose class D or class G license has been suspended pursuant to section 28-1385 or suspended or revoked for a first refusal pursuant to section 28-1321, a second violation of section 28-1381 or 28-1382 or a first violation of section 28-1383, subsection A, paragraph 3 to operate a motor vehicle that is equipped with a functioning certified ignition interlock device.

B. The department may only issue a special ignition interlock restricted driver license to an applicant who is otherwise qualified by law.

C. Except as provided in section 28-1463, if the department suspends, revokes, cancels or otherwise rescinds a person's special ignition interlock restricted license or privilege for any reason, the department shall not issue a new license or reinstate the special ignition interlock restricted driver license during the prescribed period of suspension or revocation or while the person is otherwise ineligible to receive a license.

A.R.S. § 28-1403. Extension of interlock restricted licenses; hearing; scope

A. A person whose driver license restriction is extended pursuant to section 28-1461 may submit to the department a written request for a hearing. The written request must be received by the department within fifteen days after the date of the order of extension of the restriction. On receipt of a request for a hearing, a hearing shall be held within thirty days.

B. Hearings requested pursuant to this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306. For the purposes of this section, the scope of the hearing shall include only the following issues:

1. Whether the person was issued a special ignition interlock restricted driver license.
2. Whether the person tampered with the certified ignition interlock device.
3. Whether the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3, two or more times during the period of license restriction or limitation.
4. If the person is under twenty-one years of age, whether the person attempted to operate the vehicle with any spirituous liquor in the person's body during the period of license restriction or limitation.
5. Whether the person submitted proof of compliance or calibration as prescribed in section 28-1461.

A.R.S. § 28-1461. Use of certified ignition interlock devices; reporting

A. If a person's driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402:

1. The person shall:
   (a) Pay the costs for installation and maintenance of the certified ignition interlock device.
   (b) Provide proof to the department of installation of a functioning certified ignition interlock device in each motor vehicle operated by the person.
   (c) Provide proof of compliance to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

(d) Provide proof of calibration of the certified ignition interlock device to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

2. The department shall not reinstate the person's driving privilege or issue a special ignition interlock restricted driver license until the person has installed a functioning certified ignition interlock device in each motor vehicle operated by the person and has provided proof of installation to the department.

B. While a person maintains a functioning certified ignition interlock device in a vehicle pursuant to this chapter, the ignition interlock manufacturer shall electronically provide the following information to the department in the manner and format prescribed by the department in rule, and the department shall reject any information that does not meet these requirements:

1. Any tampering or circumvention.
2. Any failure to provide proof of compliance or inspection of the certified ignition interlock device as prescribed in this section.
3. Any attempt to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the vehicle with any spirituous liquor in the person's body.
4. Each time that a person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

C. If the person is under eighteen years of age, the ignition interlock service provider, if requested by the person's parent or legal guardian, shall provide to the person's parent or legal guardian the information prescribed in subsection B of this section.

D. On request, the ignition interlock manufacturer shall provide the information prescribed in subsection B of this section to:

1. The department of health services authorized provider.
2. The probation department that is providing alcohol or other drug screening, education or treatment to the person.
3. The physician, psychologist, physician assistant, registered nurse practitioner or substance abuse counselor who is evaluating the person's ability to safely operate a motor vehicle following a revocation of the person's driving privilege as prescribed in section 28-3315, subsection D.
4. The court.

E. The department shall extend an ignition interlock restricted or limited driver license and the certified ignition interlock device period for six months if the department has reasonable grounds to believe that any of the following applies:

1. The person tampered with or circumvented the certified ignition interlock device.
2. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3, two or more times during the period of license restriction or limitation.

3. If the person is under twenty-one years of age, the person attempted to operate the vehicle with any spirituous liquor in the person's body during the period of license restriction or limitation.
4. The person failed to provide proof of compliance or inspection as prescribed in this section.
5. The person attempts to operate the vehicle with an alcohol concentration of 0.08 or more during a six month extension pursuant to this subsection.
6. The person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

F. If the special ignition interlock restricted license is extended pursuant to subsection E of this section, the limitations prescribed in sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the restrictive period of the license ends.

G. The department shall make a notation on the driving record of a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section 28-1402 that states that the person shall not operate a motor vehicle unless it is equipped with a certified ignition interlock device. Unless the person is convicted of a second or subsequent violation of section 28-1381, 28-1382 or 28-1383, the notation may not include any mark, color change or other notation or indication on the person's physical driver license.

H. Proof of compliance does not include a skipped or missed random sample if the motor vehicle's ignition is off at the time of the skipped or missed sample.

A.R.S. § 28-1464. Ignition interlock devices; violations; classification; definition

A. Except in cases of a substantial emergency, a person shall not knowingly rent, lease or lend a motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 unless the motor vehicle is equipped with a functioning certified ignition interlock device.

B. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 and who rents, leases or borrows a motor vehicle from another person shall notify the person who rents, leases or lends the motor vehicle to the person that the person has specific requirements for the operation of the motor vehicle and the nature of the requirements.

C. During any period when a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is required to operate only a motor vehicle that is equipped with a certified ignition interlock device, the person shall not request or permit any other person to breathe into the ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

D. A person shall not breathe into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402.

E. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

F. A person who is not an ignition interlock service provider or an agent or subcontractor of an ignition interlock service provider and who is not a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

G. Except in cases of substantial emergency, a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not operate a motor vehicle without a functioning certified ignition interlock device during the applicable time period.

H. If the ignition interlock device is removed from a vehicle by an ignition interlock service provider, the ignition interlock manufacturer shall electronically notify the department in a form prescribed by the department that the ignition interlock device has been removed from the vehicle.

I. If the person does not provide evidence to the department within seventy-two hours that the person has installed a functioning certified ignition interlock device in each vehicle operated by the person and has provided proof of installation to the department, the department shall suspend the special ignition interlock restricted driver license or privilege as prescribed in section 28-1463.

J. A person who is ordered by the court or required by the department pursuant to section 28-3319 to equip any motor vehicle the person operates with a certified ignition interlock device shall while under arrest submit to any test chosen by a law enforcement officer pursuant to section 28-1321, subsection A.

K. A person who violates this section is guilty of a class 1 misdemeanor. Additionally, if a person is convicted of violating subsection B, C, E or G of this section, the department shall extend the duration of the certified ignition interlock device requirement for not more than one year.

L. For the purposes of this section, "substantial emergency" means that a person other than the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is not reasonably available to drive in response to an emergency.

A.R.S. § 28-1465. Rulemaking; ignition interlock service providers and manufacturers; civil penalty

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for the administration and enforcement of this article, including a rule that permits the director to impose a civil penalty against a manufacturer of a certified ignition interlock device or an ignition interlock service provider who fails to properly report ignition interlock data to the director in the manner prescribed by the director. Any monies collected from civil penalties imposed for a failure to report ignition interlock data shall be deposited in the driving under the influence abatement fund established by section 28-1304.

A.R.S. § 28-1526. Point assessment

If a person violates chapter 3 or 4 of this title, the department may assess points against the person's driving record for only one violation if multiple violations result from the same action or course of conduct. For the purposes of this section, the department shall assess the number of points for the violation that the department determines has the highest number of points.

A.R.S. § 28-3002. Fees; driver licenses; disposition

A. The following fees are required:

1. For each original or initial application or renewal application, if a written examination is required, for the following:
   (a) Class A driver license, twenty-five dollars.
   (b) Class B driver license, twenty-five dollars.
   (c) Class C driver license, twelve dollars fifty cents.
   (d) Class D driver license issued pursuant to section 28-3171, ten dollars.
   (e) Class M driver license issued pursuant to section 28-3171, ten dollars.
2. Except as provided in paragraph 1, for each original, renewal or reinstatement application for a class D, G or M license:

Age	Fee
50 or older	$10.00
45-49	$15.00
40-44	$20.00
39 or younger	$25.00

3. For each original or initial application or renewal examination, if a written application is required, for the following endorsements to a driver license:
   (a) Bus endorsement, ten dollars.
   (b) Hazardous materials endorsement, ten dollars.
   (c) Tank vehicle endorsement, ten dollars.
   (d) Double-triple trailer endorsement, ten dollars.
   (e) Motorcycle endorsement, seven dollars.
4. For taking each driving test for a:
   (a) Class A driver license, twenty-five dollars.
   (b) Class B driver license, twenty-five dollars.
   (c) Class C driver license, twelve dollars fifty cents.
   (d) Bus endorsement, five dollars.
5. For each application for an instruction permit under:
   (a) Section 28-3154 or 28-3156, seven dollars.
   (b) Section 28-3155, three dollars.
   (c) Section 28-3225, class A, twenty-five dollars.
   (d) Section 28-3225, class B, twenty-five dollars.

(e) Section 28-3225, class C, twelve dollars fifty cents.

6. For each renewal application, if a written examination is not required, for a:
   (a) Class A driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.
   (b) Class B driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.
   (c) Class C driver license and any endorsement, other than a hazardous materials endorsement, to the license, ten dollars.
7. For each application for a duplicate of a driver license, an amount determined by the director.
8. For each application for a duplicate of an instruction permit, two dollars.
9. In addition to the fees prescribed in paragraph 2 and except as provided in paragraph 11:
   (a) For reinstatement of driving privileges after suspension or disqualification, ten dollars.
   (b) For reinstatement of driving privileges after revocation, twenty dollars.
10. For each application for an extension by mail of a driver license, five dollars.
11. In addition to the fees prescribed in paragraph 2, for reinstatement of driving privileges that were suspended or denied pursuant to section 28-1385 after completion of the suspension or revocation, fifty dollars.
12. For vision screening tests of out-of-state drivers, five dollars.
13. For class D or M driver license skills tests for out-of-state drivers, fifteen dollars.
14. For a driver license or nonoperating identification license issued pursuant to section 28-3175, an amount to be determined by the director.

B. Except as otherwise provided by statute, the director shall immediately deposit, pursuant to sections 35-146 and 35-147, fees collected under this section in the Arizona highway user revenue fund.

C. The fees established pursuant to this section do not apply to a veteran who does not have a residence address or whose residence address is the address of a shelter that provides services to the homeless. For the purposes of this subsection, "veteran" has the same meaning prescribed in section 41-601.

A.R.S. § 28-3153. Driver license issuance; prohibitions

A. The department shall not issue the following:
   1. A driver license to a person who is under eighteen years of age, except that the department may issue:
      (a) A restricted instruction permit for a class D or G license to a person who is at least fifteen years of age.
      (b) An instruction permit for a class D, G or M license as provided by this chapter to a person who is at least fifteen years and six months of age.
      (c) A class G or M license as provided by this chapter to a person who is at least sixteen years of age.
   2. A class D, G or M license or instruction permit to a person who is under eighteen years of age and who has been tried in adult court and convicted of a second or subsequent violation of criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or convicted of a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful

use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, or who has been adjudicated delinquent for a second or subsequent act that would constitute criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or adjudicated delinquent for an act that would constitute a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, if committed by an adult.

3. A class A, B or C license to a person who is under twenty-one years of age, except that the department may issue a class A, B or C license that is restricted to only intrastate driving to a person who is at least eighteen years of age.
4. A license to a person whose license or driving privilege has been suspended, during the suspension period.
5. Except as provided in section 28-3315, a license to a person whose license or driving privilege has been revoked.
6. A class A, B or C license to a person who has been disqualified from obtaining a commercial driver license.
7. A license to a person who on application notifies the department that the person is an alcoholic as defined in section 36-2021 or a drug dependent person as defined in section 36-2501, unless the person submits a medical examination report that includes a current evaluation from a substance abuse counselor indicating that, in the opinion of the counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle.
8. A license to a person who has been adjudged to be incapacitated pursuant to section 14-5304 and who at the time of application has not obtained either a court order that allows the person to drive or a termination of incapacity as provided by law.
9. A license to a person who is required by this chapter to take an examination unless the person successfully passes the examination.
10. A license to a person who is required under the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited the proof.
11. A license to a person if the department has good cause to believe that the operation of a motor vehicle on the highways by the person would threaten the public safety or welfare.
12. A license to a person whose driver license has been ordered to be suspended for failure to pay child support, except that a noncommercial restricted license may be issued pursuant to section 25-518.
13. A class A, B or C license to a person whose license or driving privilege has been canceled until the cause for the cancellation has been removed.
14. A class A, B or C license or instruction permit to a person whose state of domicile is not this state.
15. A class A, B or C license to a person who fails to demonstrate proficiency in the English language as determined by the department.

B. The department shall not issue a driver license to or renew the driver license of the following persons:

1. A person about whom the court notifies the department that the person violated the person's written promise to appear in court when charged with a violation of the motor vehicle laws of this state until the department receives notification in a manner approved by the department that the person appeared either voluntarily or involuntarily or that the case has been adjudicated, that the case is being appealed or that the case has otherwise been disposed of as provided by law.
2. If notified pursuant to section 28-1601, a person who fails to pay a civil penalty as provided in section 28-1601, except for a parking violation, until the department receives notification in a manner approved by the department that the person paid the civil penalty, that the case is being appealed or that the case has otherwise been disposed of as provided by law.

C. The magistrate or the clerk of the court shall provide the notification to the department prescribed by subsection B of this section.

D. Notwithstanding any other law, the department shall not issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. For an application for a driver license or a nonoperating identification license, the department shall not accept as a primary source of identification a driver license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law. The director shall adopt rules necessary to carry out the purposes of this subsection. The rules shall include procedures for:
1. Verification that the applicant's presence in the United States is authorized under federal law.
2. Issuance of a temporary driver permit pursuant to section 28-3157 pending verification of the applicant's status in the United States.

A.R.S. § 28-3158. Driver license or instruction permit application

A. A person who applies for an instruction permit or for a driver license shall use a form furnished by the department.

B. An applicant shall pay the fee prescribed by section 28-3002 for a driver license or for an instruction permit issued under section 28-3154, 28-3155, 28-3156 or 28-3225. The department shall refund an application fee pursuant to section 28-373.

C. An applicant for an instruction permit or a driver license shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and domicile residence address in this state, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law.

D. The application for an instruction permit or a driver license shall state the following:
1. A brief description of the applicant and any other identifying information required by the department.
2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued and what state or country issued the license.
3. If the applicant was never licensed, the applicant's last previous state or country of residence.
4. The social security number of the applicant.

E. The department shall:

1. Verify that a social security number provided by an applicant is a valid number assigned to that applicant.
2. Retain the social security number in its records.

F. The social security number provided to the department pursuant to subsection D of this section for an applicant's driver license or instruction permit shall not appear on an applicant's driver license or instruction permit unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. Except as provided in sections 28-455 and 41-1954, the department shall not release the social security number to any person unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. The provisions of this subsection shall be included in each application.

G. The department may adopt and implement procedures to deny a driver license or instruction permit to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a driver license or permit if the person's legal presence status is restored.

H. On request of an applicant, the department shall allow the applicant to provide on the license or permit a post office box address that is regularly used by the applicant.

I. The department may request an applicant who appears in person for a license, a duplicate license or reinstatement of a driving privilege to complete satisfactorily the vision screening prescribed by the department.

J. If a driver license applicant submits satisfactory proof to the department that the applicant is a veteran, on request of the applicant, the department shall allow a distinguishing mark to appear on the license that identifies the person as a veteran.

A.R.S. § 28-3160. Applications of minors; liability

A. Except as provided in section 28-3161, the following person or persons shall sign and verify before a person authorized to administer oaths the application of a person under eighteen years of age for an instruction permit, a class G or M driver license or an endorsement to a class G or M driver license:

1. If both the father and mother of the applicant are living, have custody of the applicant and are married to each other, either the father or the mother of the applicant.
2. If both the father and mother of the applicant are living, have custody of the applicant and are not married to each other, both the father and mother of the applicant.
3. If one parent of the applicant has custody of the applicant, the parent who has custody.
4. If neither parent of the applicant is living, the person or guardian who has custody of the applicant or an employer of the applicant.
5. If the applicant resides with a foster parent, the foster parent.
6. If there is no guardian or employer of the applicant, a responsible person who is willing to assume the obligation imposed by this chapter on a person who signs the application of a minor.

B. Negligence or wilful misconduct of a minor when driving a motor vehicle on a highway is imputed to the person who signs the application of the minor for a permit or license. Except as otherwise provided in subsection D of this section, the person who signs the application is jointly and severally liable with the minor for damage caused by the negligence or wilful misconduct.

C. Notwithstanding section 25-214, subsection C, a spouse who signs the application pursuant to subsection A of this section binds the marital community.

D. The parents or guardian of a minor are not liable under subsection B of this section during the time proof of financial responsibility is maintained by the minor or on behalf of the minor in the form and in amounts required by law for the operation of a motor vehicle the minor owns, or if the minor is not the owner of a motor vehicle, for the operation of any motor vehicle.

A.R.S. § 28-3165. Nonoperating identification license; immunity; rules; emancipated minors; definition

A. On receipt of an application from a person who does not have a valid driver license issued by this state or whose driving privilege is suspended, the department shall issue a nonoperating identification license that contains a distinguishing number assigned to the licensee, the full legal name, the date of birth, the residence address and a brief description of the licensee and either a facsimile of the signature of the licensee or a space on which the licensee is required to write the licensee's usual signature with pen and ink. A nonoperating identification license that is issued to a person whose driving privilege is suspended shall not be valid for more than one hundred eighty days from the date of issuance.

B. On request of an applicant:

1. The department shall allow the applicant to provide on the nonoperating identification license a post office box address that is regularly used by the applicant.
2. If the applicant submits satisfactory proof to the department that the applicant is a veteran, the department shall allow a distinguishing mark to appear on the nonoperating identification license that identifies that person as a veteran.

C. A person who is issued a license pursuant to this section shall use it only for identification purposes of the licensee. The nonoperating identification license does not grant authority to operate a motor vehicle in this state. The department shall clearly label the nonoperating identification license "for identification only, not for operation of a motor vehicle".

D. On issuance of a driver license, the holder of a nonoperating identification license shall surrender the nonoperating identification license to the department and the department shall not refund any fee paid for the issuance of the nonoperating identification license.

E. A nonoperating identification license shall contain the photograph of the licensee. The department shall use a process in the issuance of nonoperating identification licenses that prohibits as nearly as possible the ability to superimpose a photograph on the license without ready detection. The department shall process nonoperating identification licenses and photo attachments in color.

F. On application, an applicant shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and residence address, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law. The application shall briefly describe the applicant, state whether the applicant has been licensed, and if so, the type of license issued, when and by what state or country and whether any such license is under suspension, revocation or cancellation. The application shall contain other identifying information required by the department.

G. The department may adopt and implement procedures to deny a nonoperating identification license to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a nonoperating identification license if the person's legal presence status is restored.

H. A nonoperating identification license issued by the department is solely for the use and convenience of the applicant for identification purposes.

I. The department shall adopt rules and establish fees for issuance of a nonoperating identification license, except that the department shall not require an examination.

J. The fees established pursuant to this section do not apply to any of the following:

1. A person who is sixty-five years of age or older.
2. A person who is a recipient of public monies as an individual with a disability under title XVI of the social security act, as amended.
3. A veteran who does not have a residence address.
4. A veteran whose residence address is the address of a shelter that provides services to the homeless.
5. A child in the custody of the department of child safety.

K. If a person qualifies for a nonoperating identification license and is under the legal drinking age, the department shall issue a license that is marked by color, code or design to immediately distinguish it from a nonoperating identification license issued to a person of legal drinking age. The department shall indicate on the nonoperating identification license issued pursuant to this subsection the year in which the person will attain the legal drinking age.

L. If a minor has been emancipated pursuant to title 12, chapter 15, on application and proof of emancipation, the department shall issue a nonoperating identification license that contains the words "emancipated minor".

M. Notwithstanding any other law, if an applicant for a nonoperating identification license is at least sixteen years of age and either does not have a residence address or is in the department of child safety's custody, the applicant does not need a signature of the applicant's parent, guardian, foster parent or employer.

N. For the purposes of this section, "veteran" has the same meaning prescribed in section 41-601.

A.R.S. § 28-3170. Duplicate permit or license

A. If an instruction permit or driver license issued under this chapter is lost, destroyed or made illegible, if the name or address of the applicant changes or if a new photo image is desired, the person to whom the permit or license was issued may obtain a duplicate, update or substitute of the permit or license, on payment of the fee required by section 28-3002.

B. If a person holds a driver license and wants a distinguishing mark on the license that identifies the person as a veteran, the person may obtain an update or substitute of the license after both of the following:

1. Submitting satisfactory proof to the department that the applicant is a veteran.
2. Paying the fee required by section 28-3002, subsection A, paragraph 7.

A.R.S. § 28-3175. Driver licenses; nonoperating identification licenses; use for boarding aircraft; accessing restricted areas; rules

A. Notwithstanding any other law, on or before April 1, 2016, if a driver license applicant or nonoperating identification license applicant requests a driver license or nonoperating identification license that allows the applicant to board a federally regulated commercial aircraft or to access restricted areas in federal facilities, nuclear power plants or military facilities, the department must issue the applicant the driver license or nonoperating identification license.

B. A driver license or nonoperating identification license issued pursuant to this section:

1. Shall be valid for a period not to exceed eight years.
2. May not contain radio frequency identification technology.

C. The department shall adopt rules to implement this section.

A.R.S. § 28-3227. Commercial drivers; convictions; notification requirements; violation

A. A driver of a commercial motor vehicle who has a driver license issued by this state and who is convicted of violating a state law or local ordinance relating to motor vehicle traffic in any state or a federal, provincial, territorial or municipal law of another country, other than a parking violation, shall notify the department within thirty days of the date of the conviction in the manner prescribed by the department.

B. A driver of a commercial motor vehicle who has a driver license issued by this state and who is convicted of violating a state law or local ordinance relating to motor vehicle traffic in any state or a federal, provincial, territorial or municipal law of another country, other than a parking violation, shall notify the person's employer in writing of the conviction within ten days of the date of conviction.

C. A driver whose driver license is suspended, revoked or canceled by a state, who loses the privilege to drive a commercial motor vehicle in a state for any period of time or who is disqualified from driving a commercial motor vehicle for any period of time shall notify the person's employer of the action before the end of the business day following the day the driver receives notice of the action.

D. A person who applies for employment as a driver of a commercial motor vehicle shall provide the person's employer, at the time of application, with the following information for the ten years preceding the date of application:

1. A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle.
2. The dates the applicant was employed by each employer.
3. The reason for leaving each employment.

E. The applicant shall certify that all information furnished pursuant to subsection D of this section is true and complete. An employer may require an applicant to provide additional information.

F. A driver of a commercial motor vehicle who provides false or fraudulent information to an employer or who fails to report the information required in subsection A, B, C or D of this section is guilty as provided in section 28-3481.

A.R.S. § 28-3306. Discretionary license suspension or revocation; traffic survival school; hearing

A. The department may suspend or revoke the license of a driver or require a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers on a showing by department records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of the license is required on conviction.
2. Has been involved as a driver in an accident resulting in the death or personal injury of another or serious property damage.
3. Has been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with such a frequency that it indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.
4. Has been convicted of reckless driving as provided in section 28-693 or is a habitually reckless or negligent driver of a motor vehicle.
5. Is medically, psychologically or physically incapable of operating a motor vehicle and, based on law enforcement, medical or other department information, the continued operation of a motor vehicle by the licensee would endanger the public health, safety and welfare.
6. Has committed or permitted an act involving an unlawful or fraudulent use of the license.
7. Has committed an offense in another jurisdiction that if committed in this state is grounds for suspension or revocation.
8. Has been convicted of a violation of section 28-1381 or 28-1382.
9. Has been convicted of a violation of section 28-1464.

B. On receipt of satisfactory evidence of a violation of a driver license restriction, the department may suspend or revoke the driver license.

C. On suspending or revoking the license of a person or requiring a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers pursuant to this section, the department shall notify the licensee in writing immediately.

D. On the receipt of the person's request for a hearing, the department shall set the hearing within sixty days. The department may hold the hearing in person, by telephone or by videoconference. If the department holds the hearing in person, the department shall hold the hearing in the county where the licensee resides unless the law enforcement agency issuing the citation or affidavit that authorizes the suspension or revocation requests at the time of issuance that the hearing be held in the county where the violation allegedly occurred.

E. If a hearing is held, the department or its duly authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee.

F. At the hearing, the department shall either rescind its order of suspension or its order requiring the licensee to attend and successfully complete approved traffic survival school educational sessions or, if good cause exists, the department may uphold or extend the order, revoke the license or make any order that is within its discretionary power under this section and that is in the interest of public safety.

G. If a licensee receives notice requiring the licensee to attend and successfully complete approved traffic survival school educational sessions and the department receives information of noncompliance with this order, the department shall amend the order to suspend or revoke the license.

H. A person whose driver license is suspended or revoked as provided in subsection A, paragraph 5 of this section may submit a written request to the department for an administrative hearing. The person shall submit the request for a hearing within fifteen days after the department provides the person with notice of suspension or revocation. On receipt of a proper request for a hearing, the department shall provide the person with an opportunity for a hearing in the county where the person resides within thirty days after the department receives the request. The request for a hearing does not stay a summary suspension issued by the department.

I. The department shall remove a suspension from a record if the person has completed all requirements imposed under this title or by a court in this state, including the successful completion of traffic survival school educational sessions, except for payment of reinstatement fees as prescribed by section 28-3002. The person shall pay the appropriate reinstatement fees that are required under section 28-3002 when conducting a transaction with the department.

A.R.S. § 28-3312. Mandatory disqualification of commercial driver licenses; definition

A. The department shall disqualify a person who is required to have a commercial driver license, who is a commercial driver license holder or who is a commercial learner's permit holder from driving a commercial motor vehicle as follows:

1. Except as provided in subsection E of this section and except as otherwise provided in this subsection, for at least one year if a person:
   (a) Refuses a test in violation of section 28-1321.
   (b) Is convicted of a first violation of any of the following:
      (i) Driving a commercial motor vehicle under the influence of intoxicating liquor or a controlled substance or while having an alcohol concentration of 0.04 or more.
      (ii) Leaving the scene of an accident involving a motor vehicle driven by the person.
      (iii) Using a motor vehicle in the commission of a felony.
      (iv) A violation of chapter 4, article 3 of this title while operating a noncommercial motor vehicle.
      (v) Driving a commercial motor vehicle while, as a result of prior violations of this title committed while operating a commercial motor vehicle, the person's commercial driver license is revoked, suspended or canceled or the person is disqualified from operating a commercial motor vehicle.
      (vi) Causing a fatality through the negligent operation of a commercial motor vehicle, including a conviction of manslaughter, homicide or negligent homicide resulting from operation of a motor vehicle.
2. For at least three years, if the person is convicted of any of the violations prescribed in paragraph 1 of this subsection and the violation occurred while the person was transporting a hazardous material in the quantity and under the circumstances that require placarding of the transport vehicle under the department's safety rules pursuant to chapter 14 of this title.

3. For the life of the person, if the person is convicted of two or more violations of any of the offenses prescribed in paragraph 1 of this subsection or of any combination of those offenses arising from two or more separate incidents. The department shall consider only offenses committed from and after December 31, 1989 in applying this paragraph.
4. Permanently if the person is convicted of using any motor vehicle in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance.
5. For at least sixty consecutive days, if the person is convicted of two serious traffic violations committed in a motor vehicle arising from separate incidents occurring within a three-year period from the date of the violation.
6. For at least one hundred twenty days served in addition to any other disqualification, if the person is convicted of a third or subsequent serious traffic violation committed in a motor vehicle arising from separate incidents occurring within a three-year period from the date of the violation.
7. For at least sixty consecutive days, if the department determines that the person falsified information or documentation as part of the licensing process.
8. For at least one year, if the person is convicted of fraud related to the issuance of a commercial learner's permit or commercial driver license.
9. Permanently if the person is convicted of any of the following offenses or an offense committed in another jurisdiction that if committed in this state would be a violation of any of the following offenses and a commercial motor vehicle was used in the commission of the offense:
   (a) Sex trafficking pursuant to section 13-1307.
   (b) Trafficking of persons for forced labor or services pursuant to section 13-1308.
   (c) Child sex trafficking pursuant to section 13-3212.

B. Except as provided in subsection C of this section, a person who is required to have a commercial driver license or a commercial driver license holder and who is found responsible for violating an out-of-service order pursuant to section 28-5241 is disqualified from driving a commercial motor vehicle as follows:
1. For a period of one hundred eighty days if the person is found responsible for a first violation of an out-of-service order.
2. For a period of two years if the person is found responsible for a second violation of any out-of-service order during any ten-year period arising from separate incidents.
3. For a period of three years if the person is found responsible for a third or subsequent violation of any out-of-service order during any ten-year period arising from separate incidents.

C. A person who is required to have a commercial driver license or a commercial driver license holder and who is found responsible for violating an out-of-service order pursuant to section 28-5241 while transporting hazardous materials or while operating a commercial motor vehicle designed or used to transport sixteen or more passengers, including the driver, is disqualified from driving a commercial motor vehicle as follows:

1. For a period of one hundred eighty days if the person is found responsible for a first violation of an out-of-service order.
2. For a period of three years if the person is found responsible for a second or subsequent violation of any out-of-service order during any ten-year period arising from separate incidents.

D. A person who is required to have a commercial driver license or a commercial driver license holder and who is convicted of or found responsible for violating any federal, state or local railroad grade crossing law, ordinance or regulation is disqualified from driving a commercial motor vehicle as follows:
1. For a period of sixty days if a person is convicted of or found responsible for a first violation.
2. For a period of one hundred twenty days if a person is convicted of or found responsible for a second violation during any three-year period.
3. For a period of one year if a person is convicted of or found responsible for a third or subsequent violation during any three-year period.

E. If a federal agency determines that a commercial motor vehicle licensee is driving in a manner that constitutes an imminent hazard, the department, on receipt of notification by the federal government, shall disqualify the driver for a period not to exceed one year. The disqualification shall run concurrently with any other disqualification imposed on the driver. For the purposes of this subsection, "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding to decrease the risk of death, illness, injury or endangerment.

F. The department shall keep records of findings of responsibility for a civil traffic violation and of conviction of any moving criminal traffic violation for a commercial driver licensee for violations in any type of motor vehicle and for a person required to have a commercial driver license if the violations arise from the operation of a commercial motor vehicle. The department shall make the records available to other states, the United States secretary of transportation, the driver and any motor carrier or prospective motor carrier or the motor carrier's designated agent within ten days after receiving a report of a conviction or finding of responsibility in this state or receipt of a report of a conviction or finding of responsibility or disqualification received from another state.

G. Disqualification for a serious traffic violation committed by a commercial driver license holder while operating a noncommercial motor vehicle applies only if the conviction results in the revocation, cancellation or suspension of the person's commercial driver license or noncommercial driver license.

H. The department may adopt rules establishing guidelines and conditions under which the department may reduce a disqualification for life pursuant to subsection A, paragraph 3 of this section to a disqualification of at least ten years. If a person's disqualification is reduced pursuant to rules adopted pursuant to this subsection and the person is subsequently convicted of a violation described in subsection A, paragraph 1 of this section, the person is permanently disqualified from driving a commercial vehicle and is not eligible to apply for a reduction of the disqualification pursuant to rules adopted pursuant to this subsection.

I. Except as provided in subsection E of this section, the beginning date of the disqualification shall be ten days after the date the department receives the report of conviction or finding of responsibility.

J. For the purposes of this section, "serious traffic violation" means a conviction or finding of responsibility for any of the following:

1. Excessive speeding involving a single offense for a speed of fifteen miles per hour or more above the posted speed limit.
2. Reckless driving as provided by section 28-693.
3. Aggressive driving as provided by section 28-695.
4. Racing as defined in section 28-708.
5. Improper or erratic traffic lane changes as provided by section 28-729.
6. Following the vehicle ahead too closely as provided by section 28-730.
7. A violation of this title that is connected with a fatal traffic accident.
8. Driving a commercial motor vehicle if the person has not been issued a valid commercial driver license pursuant to this chapter.
9. Driving a commercial motor vehicle without a commercial driver license in the person's possession.
10. Driving a commercial motor vehicle without having a valid endorsement for the type of commercial motor vehicle or motor vehicle combination being operated.
11. Driving a commercial motor vehicle while using a portable wireless communication device as provided by section 28-914.

A.R.S. § 28-4144. Notice; suspension; reinstatement fees

A. If the owner's response to a mailing pursuant to section 28-4143 indicates that the motor vehicle does not meet the financial responsibility requirement of section 28-4135 or section 28-4033, subsection A, paragraph 2, subdivision (c), the department shall send a suspension notice to the owner that states:

1. The motor vehicle does not meet the financial responsibility requirements.
2. The owner's driver license and motor vehicle registration will be suspended fifteen days after the date the suspension notice is mailed and, if the owner is required to comply with section 28-4033, subsection A, paragraph 2, subdivision (c), that all motor vehicles that are registered to the owner and that do not meet the financial responsibility requirements will be suspended fifteen days after the date the notice is mailed unless either:
   (a) The owner produces additional evidence to the department on or before the effective date of the suspension that the financial responsibility requirement of section 28-4135 or section 28-4033, subsection A, paragraph 2, subdivision (c) was met for the vehicle on the date of the accident.
   (b) The owner requests a hearing.

B. If a response is not received within thirty days after the date the original notice requiring proof of financial responsibility is mailed, the department shall:

1. Send a suspension notice to the owner that the owner's driver license and motor vehicle registration or registration privilege will be suspended fifteen days after the date the suspension notice is mailed and, if the

owner is required to comply with section 28-4033, subsection A, paragraph 2, subdivision (c), that all motor vehicles that are registered to the owner and that do not meet the financial responsibility requirements will be suspended fifteen days after the date the notice is mailed unless the owner submits evidence of financial responsibility or proof that the vehicle was sold pursuant to section 28-4143 before the effective date of the suspension.

2. If a response or evidence of financial responsibility or proof of vehicle sale pursuant to section 28-4143 is not received within the required time, suspend the motor vehicle registration or registration privilege, license plate and driver license.
3. If there is no other basis for the suspension and evidence of financial responsibility or evidence of vehicle sale is later submitted, verify the evidence of financial responsibility or sale pursuant to section 28-4143 and remove the suspension from the public record if financial responsibility is proven.

C. Except as provided in subsection B of this section, if the motor vehicle registration, registration privilege, license plate or driver license is suspended pursuant to section 28-4143 or this section:
1. The suspension is for a minimum of one year.
2. The department shall not terminate the suspension until the applicant both:
   (a) Files with the department proof of financial responsibility in accordance with article 3 of this chapter.
   (b) Pays to the department a ten dollar fee for the reinstatement of the driver license and a twenty-five dollar fee for the reinstatement of the motor vehicle registration and license plate, except that these fees do not apply to a suspension removed pursuant to subsection B of this section or to a suspension applicable to a person who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter unless the person was required to comply with the financial responsibility requirements prescribed in section 28-4033, subsection A, paragraph 2, subdivision (c).

Other Applicable Rules

R2-12-605. Transfer of Electronic Voter Registration Information

A. The Secretary of State, or its duly authorized third party, shall receive an electronic voter registration information from an accepted transmitter and deliver it to a destination county recorder.

B. A county recorder may:

1. Receive electronic voter registration information updates through the Secretary of State;
2. Receive paper renditions of the electronic voter registration information on a registration form prescribed by the Secretary of State;
3. Receive digitized images of the electronic voter registration information in a registration form prescribed by the Secretary of State.

C. Information collected to update a registrant's voter registration information may be transmitted electronically if the following conditions are true:

1. A registrant provides information to a transmitter for updating the registrant's name or address in the identification register pursuant to A.R.S. § 16-112(B)(4).
2. The information specified in subsection (C)(1) is received from a transmitter specified in R2-12-604(A).
3. The information specified in subsection (C)(1) is transmitted in an electronic voter registration format via an electronic manner accepted by the Secretary of State.
4. The information specified in subsection (C)(1) uniquely identifies an elector of a county recorder's voter registration roll by name and date of birth.

D. Information collected for the intent of initial registration to the voter registration rolls may be transmitted electronically if:

1. The information meets the criteria of subsection (C);
2. The information contains a digitized image of a registrant's wet signature; and
3. The information has been electronically signed by a registrant to authorize the transmitter to release the electronic voter registration form.

E. Voter registration information shall be kept confidential pursuant to A.R.S. § 16-153.

F. Driver's license information shall be kept confidential pursuant to A.R.S. § 16-112.

Federal Regulations and Code Citations

6 CFR 37 - Real ID Driver's Licenses and Identification Cards

49 CFR 384.206 - State record checks

49 CFR 384.210 - Limitation on licensing

49 CFR 384.225 - CDLIS driver recordkeeping

49 CFR 384.231 - Satisfaction of State disqualification requirement

49 CFR 384.232 - Required timing of record checks

49 CFR 391.15 - Disqualification of drivers

49 U.S.C. Chapter 313 - Commercial Motor Vehicle Operators

Government Relations and Rules

Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 4

Department of Transportation

Title, Registration, and Driver Licenses

Article 4 – Driver Licenses

Submitted to the Governor's Regulatory Review Council
May 2023

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 4

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Section A

Report Summary

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 4

Report Summary

The Director of the Department of Transportation (Department) has broad authority under A.R.S. §§ 28-366 and 28-7045 to adopt rules for collection of taxes and license fees, public safety and convenience, enforcement of the provisions of law the Director administers or enforces, and exercising complete and exclusive operational control and jurisdiction over the use of any highway or route on the State Highway System, including any portion of the Interstate Highway System located within the state, to prevent the abuse and unauthorized use of those highways and routes.

This five-year review report covers 12 rules and 1 Table in Chapter 4, Article 4, relating to driver licenses, non-operating identification licenses, and other credentials issued by the Department pursuant to A.R.S. Title 28, Chapter 8. These rules reflect reasonable licensing requirements, restrictions, and allowances for motor vehicle driver qualification and operating practices required by statute; inform the public of the actions the Department may require of licensees by law to curb unsafe driving behavior and increase safety on Arizona roadways; and promote a compatible, safe, and efficient transportation system for all members of the public.

The Department acknowledges that most of the updates indicated in the previous five-year review report were not completed by June 30, 2018, as anticipated. However, the Department is still committed to making these changes as part of its continuing effort to revise and streamline all of Article 4. The Department's efforts to extensively revise and streamline all of Article 4 have failed to generate the required internal and external stakeholder support needed to finally bring to fruition what has proven to be a challenging effort. Stakeholders for these rules include the Arizona Governor's Office of Highway Safety, law enforcement and court personnel, legal professionals, traffic survival schools, insurance companies, community advocacy groups, and Arizona's motoring public.

Going forward, the Department anticipates filing a Notice of Proposed Expedited Rulemaking to complete the amendments as outlined under items 4 and 10 by November 27, 2023, if approved by the Governor. The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking.

Arizona Department of Transportation

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Section B

Analysis of Individual Rules and

Identical Information within Rule Groups

Governor's Regulatory Review Council

Five-Year-Review Report

Title 17. Transportation

Chapter 4. Department of Transportation - Title, Registration, and Driver Licenses

Article 4. Driver Licenses

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

General Statutory Authority for all rules located under this Article: A.R.S. § 28-366 and 28-7045

Specific Statutory Authority is as provided below:

Rule	Specific Statutory Authority:
R17-4-401	A.R.S. §§ 28-1526, 28-1465, and 28-3306
R17-4-403	A.R.S. §§ 28-3002, 28-3165, and 28-3170
R17-4-404	A.R.S. §§ 28-1526 and 28-3306(A)(3)
Table 1	A.R.S. §§ 28-1526 and 28-3306
R17-4-406	A.R.S. §§ 8-513 and 28-3160
R17-4-407	A.R.S. §§ 28-3002, 28-3165, 28-3175, and 6 CFR 37
R17-4-408	A.R.S. §§ 28-1461, 28-1464, and 28-1465
R17-4-409	A.R.S. § 28-3165
R17-4-410	A.R.S. § 16-112 and the National Voter Registration Act of 1993 (P.L. 103-31; 107 Stat. 77; 52 United States Code sections 20501 through 20511)
R17-4-411	A.R.S. §§ 28-1461, 28-1464, 28-1465, and 28-3002
R17-4-412	A.R.S. §§ 28-1401 through 28-1403
R17-4-413	A.R.S. § 28-3312
R17-4-414	A.R.S. §§ 28-3227 and 28-3312

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

The objective of each rule is as provided below:

Rule	Objective
R17-4-401	This rule provides a better understanding of the terms used by the Department in this Article as applicable to any person applying for or maintaining a driver license, commercial driver license, endorsement, or any other type of Arizona driver privilege, instruction permit, or non-operating identification license.
R17-4-403	This rule provides the application requirements for a duplicate driver license or duplicate non-operating identification license and prescribes the fee for such licenses.

Rule	Objective
R17-4-404	This rule gives effect to A.R.S. § 28-3306(A)(3) and (A)(4), which allows the Department to take discretionary action affecting a person's driving privilege and brings before the Department, for hearing, those who may justifiably have their driver licenses suspended or revoked. The rule also prescribes the points of demerit to be assigned to a driver, provides for assignment of a driver to a traffic survival school, prescribes driver license suspension for failure to attend traffic survival school, and prescribes driver license suspension for accumulation of excessive points.
Table 1	This Table provides the point system used by the Department to assess points on the driving record of a person convicted of certain traffic violations. The Department uses these points to track and identify drivers convicted of or adjudged to have violated traffic regulations governing the movement of vehicles. The driver point assessment process is part of a comprehensive highway safety program designed to achieve a significant reduction in traffic crashes, fatalities, and injuries on public roads. The Department assigns a point value to each moving violation; the more severe the violation, the higher the point value assigned. The Table also provides the public with a clear understanding of which traffic regulations governing the movement of motor vehicles the Department will consider when determining whether a driver is a habitually reckless or negligent driver or the frequency of a driver's traffic violations indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highway.
R17-4-406	This rule prescribes the requirements for completion of a legal guardian affidavit as part of a minor's application for a driver license or instruction permit.
R17-4-407	This rule contains the application and fee requirements prescribed by the Department for obtaining a federally-recognized travel-compliant driver license or non-operating identification license.
R17-4-408	This rule provides for the mandatory extension of a certified ignition interlock device order.
R17-4-409	This rule contains the application and fee requirements prescribed by the Department for obtaining a non-operating identification license.
R17-4-410	This rule provides the process for voter registration through the Department as required under A.R.S. § 16-112 and the National Voter Registration Act of 1993 (P.L. 103-31; 107 Stat. 77; 42 United States Code section 394).
R17-4-411	This rule prescribes additional application and fee requirements for a Special Ignition Interlock Restricted Driver License.

Rule	Objective
R17-4-412	This rule prescribes the grounds and procedures for extension of a Special Ignition Interlock Restricted Driver License.
R17-4-413	This rule prescribes requirements for reinstatement of a commercial driver license after a lifetime disqualification.
R17-4-414	This rule codifies the Department's processes for collecting, recording, and processing driver history information provided by a commercial driver license applicant under 49 CFR 383.71, as currently incorporated by reference under A.A.C. R17-5-202.

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.

These rules are generally effective in achieving their objectives, but updating the related citations and providing modernization in the rule drafting style as identified under items 4 and 10 of this report, will improve the effectiveness of the rules.

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.

These rules are not consistent with applicable state or federal statutes as provided below:

Rule	Explanation
..Table 1	The descriptions following each reference to the moving violations subject to driver point valuation under A.R.S. § 28-672(A) are not all-inclusive and should be updated to include descriptions of the additional violations contained in the statute. Additional violations include: a. Failure to make a safe lane change; b. Failure to yield the right of way when entering a freeway; c. Failure to yield the right of way at an entrance to a through highway; d. Failure to make a complete stop for a person in the crosswalk of an established school crossing; e. Failure to maintain a speed of 15 miles per hour or less in an established school crossing; and f. Failure to stop before entering the crosswalk at a stop sign.

Rule	Explanation
R17-4-408	The statutory citations in subsection (B) referencing the A.R.S. § 28-1464 subsections that contain violations, which on conviction will systematically generate a mandatory extension of the certified ignition interlock device order were renumbered from subsections (A), (C), (D), (F), and (H) to subsections (B), (C), (E), and (G). The ignition interlock restricted or limited driver license and the certified ignition interlock device extension period in subsection (C) conflicts with A.R.S. § 28-1461(E). The phrase "one year" should be changed to "six months."
R17-4-410	The terms used in this rule are in conformity with A.R.S. § 16-112 and the National Voter Registration Act of 1993 (P.L. 103-31; 107 Stat. 77; 52 United States Code sections 20501 through 20511). However, the statutory definitions of "Driver's license" and "Driver's license examiner" under A.R.S. § 16-111 are outdated and not even used in A.R.S. § 16-112. Those definitions contain the term "motor vehicle division," which although technically correct as more specifically defined for the purpose of voter registration, should be removed for the purpose of consistency to reflect organizational changes made within the Department.
R17-4-411	The rule is generally consistent with state and federal statutes and other rules made by the Department except that the eleventh month reporting requirement for certified ignition interlock device manufacturers and installers, previously provided under A.R.S. § 28-1402(C), is now accomplished electronically under A.R.S. § 28-1461(B) each time an installer obtains information recorded by a certified ignition interlock device. The rule should be updated to clarify that the fees charged by the Department for a Special Ignition Interlock Restricted Driver License are the same age appropriate fees currently required under A.R.S. § 28-3002 for any other driver license reinstatement application.

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.

The Department enforces all of the rules as written unless inconsistent with other rules and statutes as indicated under item 4.

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

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

Rule	Explanation
R17-4-401; R17-4-403; R17-4-404; Table 1; and R17-4-406 thru R17-4-414	The Department believes that these rules are generally clear, concise, and understandable, but updating the related citations and providing modernization in the rule drafting style as identified under items 4 and 10 of this report, will improve the clarity, conciseness, and understandability of the rules.

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:

Commenter	Comment	Agency's Response
R17-4-401; R17-4-403; R17-4-404; Table 1; and R17-4-406 thru R17-4-414	The Department has received no written criticism of these rules in the last five years.	

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

The economic impact has essentially remained the same for all rules located under 17 A.A.C. 4, as estimated in the original or last economic impact statement prepared for the rules. However, some updated numbers are available as provided below:

Rule	Comparison
R17-4-408	On January 2, 2018, the Department maintained 5,221,403 current driver license records. As of January 2, 2023, the Department maintained 5,307,961 current driver license records.
R17-4-409	On January 2, 2018, the Department maintained 1,057,524 current non-operating identification license records. As of January 2, 2023, the Department maintained 1,299,999 current non-operating identification license records.

Rule	Comparison
R17-4-414	This rule was originally adopted in 2008 to facilitate the approval of Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding, and later helped to ensure that the Department of Public Safety (DPS) remained eligible for those federal funds. In FY 2017, DPS administered MCSAP funding in the amount of $3,450,597 for commercial motor vehicle safety programs, size and weight enforcement, drug interdiction, and traffic safety, as prescribed under 49 CFR 350.207. In fiscal year 2023, the Arizona Department of Public Safety is eligible to apply for its share of the $398,500,000 federal grant appropriations made available for all states under 49 U.S.C. § 31104.

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

The Department has received no analysis regarding any of the rules that compares the rule's impact on this state's business competitiveness with the impact on businesses in other states.

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.

Rule	Explanation
R17-4-401	Previously indicated course of action not completed: *The term "Division" should not be used or defined in this Section. Replace with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making this change as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-403	Previously indicated course of action not completed: *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making this change as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-404	Yes, the Department completed each stated course of action for this rule by Regular Rulemaking at 19 A.A.R. 3897, effective November 29, 2013, and by Exempt Rulemaking at 21 A.A.R. 1092, effective September 1, 2015.

Rule	Explanation
Table 1	Previously indicated course of action not completed: *The descriptions following each reference to the moving violations subject to driver point valuation under A.R.S. § 28-672(A) are not all-inclusive and should be updated to include descriptions of the additional violations contained in the statute. Additional violations include:* *a. Failure to make a safe lane change;* *b. Failure to yield the right of way when entering a freeway;* *c. Failure to yield the right of way at an entrance to a through highway;* *d. Failure to make a complete stop for a person in the crosswalk of an established school crossing;* *e. Failure to maintain a speed of 15 miles per hour or less in an established school crossing; and* *f. Failure to stop before entering the crosswalk at a stop sign.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-406	Previously indicated course of action not completed: *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* *Guardian: In subsection (A)(2), the term "defined in" should be changed to "prescribed under" since the term "agency" is not actually defined in A.R.S. § 8-513. Additionally, the agency that placed the child may give permission on request of a foster parent.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

Rule	Explanation
R17-4-407	Yes, the Department completed the stated course of action for this rule by Exempt Rulemaking at 22 A.A.R. 819, April 15, 2016. On September 18, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to implement Laws 2015, Chapter 294, allowing issuance of driver and identification licenses that can be used for boarding federally regulated commercial aircraft, or to access restricted areas in federal facilities, nuclear power plants or military facilities. However, since the Department established the rule by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, Council staff determined that the Department's ability to continue collecting the fee was subject to the requirements of A.R.S. 41-1008(E) and (F), so the Department re-established the fee by Final Rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019.
R17-6-408	Previously indicated course of action partially completed: The Department worked with the legislature to partially complete the course of action indicated in its previous five-year review report to *establish a manageable standard for calculating how many missed rolling retests constitute a reportable violation under the circumvention provision of A.R.S. § 28-1461(E)*. That issue was clearly addressed in statute by Laws 2018, Ch. 105, § 2, effective August 3, 2018. Previously indicated course of action not completed: *The reference to A.R.S. § 28-101(12) in subsection (A) should be amended to read A.R.S. § 28-101 since the terms under A.R.S. § 28-101 have been renumbered.* *The extension period in subsection (C) conflicts with A.R.S. § 28-1461(E). The phrase "one year" should be changed to "six months."* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

Rule	Explanation
R17-4-409	Yes, the Department completed the stated course of action for this rule by Exempt Rulemaking at 22 A.A.R. 819, April 15, 2016. On September 18, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to implement Laws 2015, Chapter 294, allowing issuance of driver and identification licenses that can be used for boarding federally regulated commercial aircraft, or to access restricted areas in federal facilities, nuclear power plants or military facilities. However, since the Department established the rule by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, Council staff determined that the Department's ability to continue collecting the fee was subject to the requirements of A.R.S. 41-1008(E) and (F), so the Department re-established the fee by Final Rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019.
R17-4-410	Previously indicated course of action not completed: *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-411	Previously indicated course of action not completed: *The phrase "an person" should be corrected to read "a person."* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-412	Previously indicated course of action not completed: *The phrase "The person may be rebut the presumption…" under subsection (C)(2) should be corrected to read, "The person may rebut the presumption…".* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

Rule	Explanation
R17-4-413	Previously indicated course of action not completed: *All gender-specific references to "his or her" need to be replaced with more appropriate terms for clarity.* *The term "Division" should be replaced with "Department" to reflect organizational changes made within the Department.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.
R17-4-414	Previously indicated course of action not completed: *The Department, in partnership with the Department of Public Safety (DPS), is currently in the process of analyzing and updating all of its motor carrier safety and hazardous materials regulations under 17 A.A.C. 5, Article 2. If that rule package continues to incorporate by reference 49 CFR 383 without exception, this rule may no longer be necessary.* The Department has not yet completed the indicated course of action for this rule, but is still committed to making these changes as part of the Department's continuing effort to revise and streamline all of Article 4.

The Department's previously stated course of action was to file a Notice of Proposed Rulemaking by June 30, 2018, which would have included all amendments outlined under items 4 and 10 of the 2018 Five-year Review Report on these rules. However, the Department was only able to complete some of the anticipated amendments as indicated above under Sections R17-4-407, R17-4-408, and R17-4-409. The Department's efforts to extensively revise and streamline all of Article 4 failed to generate the required internal and external stakeholder support needed to finally bring to fruition what has proven to be a challenging effort. Going forward, the Department anticipates filing a Notice of Proposed Expedited Rulemaking to complete the amendments as outlined above and under item 4 by November 27, 2023, if approved by the Governor. The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking.

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 least burdensome options for any process or procedure required of the regulated public or industry. These rules impose only minimal costs. Therefore, the

Department has determined that all rules located under 17 A.A.C. 4 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_**

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 regulations in 49 CFR 383, 390, 391, and 1572 are applicable to R17-4-413 and R17-4-414, but the rules are not more stringent than any 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:

With the exception of R17-4-407, all of the rules in this Article were adopted before July 29, 2010. However, the Department has analyzed each of the rules for compliance with A.R.S. § 41-1037, and has determined that each credential issued by the Department under these rules is a "general permit" since the activities and practices authorized by each class of license are identical in nature and subject to the same restrictions. Only the following exception would apply:

Rule	Compliance or Explanation
R17-4-407	Because of the stringent security and issuance requirements of the federal law, these credentials cannot be issued as general permits as required under A.R.S. § 41-1037.

14. Proposed course of action

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

Rule	Proposed Course of Action

R17-4-401; R17-4-403; R17-4-404; Table 1; R17-4-406; R17-4-408; R17-4-410; R17-4-411; R17-4-412; R17-4-413; R17-4-414.	Many of the rules in this Article contain procedures necessary for the Department to determine what level of driver improvement measures are necessary and appropriate on receiving notification that a driver was convicted of a violation, or a series of violations, so egregious as to indicate that the driver is habitually reckless or negligent, or the frequency of the driver's traffic violations indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highway. As such, these rules are critical to the Department's driver licensing operations and must be carefully analyzed and vetted by a number of stakeholders before any changes are made. Stakeholders for these rules include the Arizona Governor's Office of Highway Safety, law enforcement and court personnel, legal professionals, traffic survival schools, insurance companies, community advocacy groups, and Arizona's motoring public. The Department is currently seeking guidance from the Governor's Office regarding the new process each agency must follow, as required under A.R.S. § 41-1039, for obtaining prior written approval of the Governor before conducting any rulemaking. If approval for rulemaking is received, the Department anticipates filing a Notice of Proposed Expedited Rulemaking to amend these rules as indicated under items 4 and 10 by November 27, 2023.
R17-4-407; R17-4-409.	On September 18, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to implement Laws 2015, Chapter 294, allowing issuance of driver and identification licenses that can be used for boarding federally regulated commercial aircraft, or to access restricted areas in federal facilities, nuclear power plants or military facilities. However, since the Department established the rule by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, Council staff determined that the Department's ability to continue collecting the fee was subject to the requirements of A.R.S. 41-1008(E) and (F), so the Department re-established the fee by Final Rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019. No further course of action is necessary for these Sections.

Arizona Department of Transportation

Five-year Review Report

Title 17. Transportation

Chapter 4. Department of Transportation

Title, Registration, and Driver Licenses

Article 4. Driver Licenses

Section C

Economic Impact Statements

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-402, R17-4-403 & R17-4-409

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation, Motor Vehicle Division, engages in this rulemaking to amend existing rules with conforming language and to prescribe the fees associated with a duplicate driver license or a non-operating identification license as required under Laws 2009, 4th S.S. Chapter 3, § 6.

a. The conduct and its frequency of occurrence that the rules are designed to change:

The rules are designed to change the loss of annual revenue. Each year the agency issues an approximate 1.2 million duplicate driver and non-operating licenses at a loss of $4.2 million dollars.

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

Without a rule change the agency will continue to lose $3.51 for each transaction that occurs when a customer requests a duplicate driver license or duplicate non-operating license.

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

100%

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

The statement includes a summary of costs and benefits associated with the final rulemaking. The proposed $12 fee will have a minimal impact on the public, consumers and business and will provide a benefit to the state by generating revenue that will provide adequate administrative cost recovery, anticipates rising costs associated with production and generates revenue for the Highway User Revenue Fund (HURF) under A.R.S. §§ 28-3002, 28-3003,28-6991 and 28-6538.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Dora Vasquez, Administrative Rules Supervisor

Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 517M
Phoenix, AZ 85007

Telephone: (602) 712-8159

Fax: (602) 712-3081

E-mail: dvasquez@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Persons to bear costs	Persons to benefit
Arizona Department of Transportation	State of Arizona
Public upon purchase of a Duplicate Driver License or Non-operating Duplicate Identification Driver License	Counties
	Cities
	Towns
	Public

3. Cost benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $1,000

Moderate $1,000 to $9,999

Substantial $10,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The current $4 fee collected by the agency for each duplicate driver license or non-operating identification license was established in 1983. A recent internal agency analysis of the current $4 fee, including a review of direct costs, indirect costs and overhead costs concluded that the State of Arizona is not recovering the cost to issue duplicate driver licenses or non-operating licenses. The actual cost per transaction, including direct, indirect and overhead costs is $5.53 and each $4 fee collected is deposited into the Highway User Revenue Fund (HURF), the state highway fund share of HURF is 50.5% or $2.02 per transaction. In 2008 an estimated 1.2 million duplicate driver license transactions were processed at an estimated loss to HURF of $1.8 million. ADOT experienced an even greater loss of $4.2 million as the agency expends $5.53 per transaction and loses $3.51 per transaction.

ADOT COST PER TRANSACTION
$5.53
FEE DEPOSITED INTO HURF PER TRANSACTION
$4

ADOT'S SHARE OF HURF PER TRANSACTION
$2.02
ADOT'S LOSS PER TRANSACTION
$5.53 - $2.02 = $3.51

Also considered in the cost analysis are the fees associated with third parties who perform driver license functions under A.R.S. §28-5101. In 2008, an approximate 250,000 of the 1.2 million duplicate transactions were performed by ServiceArizona, which in accordance with A.R.S. §28-5101(F)(4) ServiceArizona retained four dollars for each of the 250,000 transactions processed.

The proposed $12 fee is well below the national average, a recent American Association of Motor Vehicle Administrators (AAMVA) survey found that the average fee for a duplicate driver license or non-operating identification license is $14.72.

COSTS:

The agency has determined that minimal costs will be incurred to update the existing system used to collect the proposed $12 fee and there will be minimal costs associated with updating publications, websites or any other sources utilized by the agency for the distribution of information regarding the fee increase.

BENEFITS:

The state of Arizona will benefit by generating revenue that will provide adequate administrative cost recovery. In addition, because revenue generated by the proposed $12 fee for a duplicate driver license or non-operating license is deposited into the Highway User Revenue Fund (HURF) monies are distributed to the State Highway Fund, cities, towns and counties.

The $12 fee will be distributed in the following manner as required by the HURF distribution formula under A.R.S. §28-6538:

Jurisdiction	Distribution Breakdown	Distribution Formula
State Highway Fund	50.5% **($6.06 per transaction)**	7.6% to Maricopa and Pima counties for controlled access with a 75% and 25% split respectively. (statutory 12.6% and special 2.6%) , 42.83% to ADOT discretionary
Cities and Towns	27.5% **($ 3.30per transaction)**	One half distributed on basis of incorporated population and one half on basis of county origin of gasoline sales and city or town population within each county.

Counties	19% **($2.28 per transaction)**	Distributed based on a portion of gasoline distribution and diesel fuel consumption and on a portion of unincorporated population.
Cities with population of 300,000 or more	3% **($0.36 per transaction)**	Phoenix, Mesa and Tucson

The proposed rules will not require any additional full-time employees for implementation and enforcement.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking:

See Table Above

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

There is no anticipated impact to businesses as a result of this proposed rulemaking.

4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:

There is no anticipated impact to private or public employment as a result of the proposed rulemaking.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

There is no anticipated impact to small business as a result of the proposed rulemaking.

a. Identification of the small businesses subject to the proposed rulemaking:

None

b. Administrative and other costs required for compliance with the proposed rulemaking:

There are no administrative or other costs required for small businesses to comply with the proposed rulemaking.

c. Description of the methods ADOT may use to reduce the impact on small businesses:

None

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

- A private person and consumer will incur a $8 increase to the existing cost of a duplicate driver license or a duplicate non-operating identification license

Under A.R.S. § 28-3165(J) a person who is 65 years of age or older and a person who is a recipient of public monies under title XVI of the Social Security Act, as amended, are exempt from fees associated with this proposed rulemaking

6. Statement of the probable effect on state revenues:

The agency anticipates a minimal increase to state revenues as a result of the proposed rulemaking.

Duplicate Driver License Fee Distribution	
Highway User Revenue Fund **$12**	
State Highway Fund $6.06 Net after Cost to Produce $0.53	Cities, Towns, Counties $5.94 Net after cost to Produce $5.94

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

The agency initially proposed an $8 fee for a duplicate driver license and a duplicate non-operating license. After subsequent analysis the agency determined that the $8 fee did not provide adequate cost recovery as funds collected from the fee are deposited into the Highway User Revenue Fund (HURF) and the agency recoups only 50.5% of funds deposited into HURF. A $12 fee allows cost recovery and provides a $0.53 profit to the state's portion of HURF to account for future costs.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

An ADOT internal analysis of the Motor Vehicle Division, ServiceArizona and Third Party providers under contract with the agency provided the data compiled in the Economic Impact Statement. This data includes the number of licenses issued; costs associated with production and HURF revenue projections.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

R17-4-401, R17-4-404, Table 1

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

This rulemaking is initiated in accordance with a Five-Year Rule Review Report approved by the Council on November 6, 2007.

The Arizona Department of Transportation, Motor Vehicle Division (Division) amends these rules to transfer the definitions provided in R17-4-404 to R17-4-401, which is itself a Section of definitions that apply to all of the rules contained in Article 4, and to clarify the driver points assessed by the Division for drivers convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with such a frequency that it indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways. In addition, the Division amends these rules to ensure conformity to Arizona Administrative Procedures Act, Secretary of State, and Governor's Regulatory Review Council rulemaking format and style requirements.

R17-4-401, a Section of definitions, saves agency employee and inquiring private parties' time and effort in clarifying the meaning of terms used within Article 4 of this Chapter.

R17-4-404 is amended to update and clarify the current rule language. The only amendment which has the appearance of being of substance is the addition of an eight point assessment for a person convicted of a violation of A.R.S. § 28-1383 - driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor. Therefore this economic impact statement will only address the addition of the eight point assessment resulting from a conviction of a violation of A.R.S. § 28-1383.

The driver point assessment process is developed as part of a comprehensive highway safety program designed to achieve a significant reduction in traffic crashes, fatalities, and injuries on public roads. The Division assigns a point value to each moving violation; the more severe the violation, the higher the point value assigned. Point values range from two to eight points.

Impaired driving is one of America's most-often-committed and deadliest crimes. Overall in 2005, 1.4 million drivers were arrested for driving impaired. Data from the National Highway Traffic Safety Administration's (NHTSA's) Fatality Analysis Reporting System (FARS) shows that, in 2005, alcohol related crashes were responsible for more than 39% of all traffic related fatalities and that 16,855 people were killed in highway crashes involving a driver or motorcycle operator with an illegal blood alcohol

concentration (BAC) of .08 or higher. In Arizona during this same time-frame, alcohol related crashes were responsible for more than 42% of all traffic related fatalities. Of that 42%, 37% involved a blood alcohol concentration (BAC) of more than the legal limit of .08. Driving with a BAC of .08 or higher is illegal in every state.

The Division assesses the maximum number of points for a driving under the influence conviction in an effort to deter driving under the influence violations. The Division employs both general and specific deterrents; the general deterrent is an increased public perception that impaired drivers will face severe consequences aimed to discourage individuals from driving impaired and the specific deterrent is that the impaired driver is subject to penalties, fines, and sanctions aimed to reduce recidivism.

The eight point assessment for conviction due to a violation of A.R.S. § 28-1383 is an effective penalty and is in agreement with the other driving under the influence violations, 28-1381 - Driving or actual physical control while under the influence; trial by jury; presumptions; admissible evidence; sentencing; classification and 28-1382 - Driving or actual physical control while under the extreme influence of intoxicating liquor; trial by jury; sentencing; classification, which also impose an eight point assessment.

As a result of the driver point assessment system, and based on the number of points accumulated in any consecutive 12 or 24 month period, the Division shall either issue a traffic survival school assignment or suspend the person's driving privilege.

The Division shall record the successful completion of traffic survival school on the person's driving record. The successful completion of traffic survival school does not nullify or void any accumulated points.

The Division will suspend a person's driving privilege if the person fails to successfully complete traffic survival school within 60 days of the date of the assignment. The person may choose to either serve the suspension or attend traffic survival school. In order to reinstate the driving privilege, once eligible, the person must pay a reinstatement fee of $10.00.

Insurance agencies may incur substantial benefits as persons whose record contains points accumulated within the most recent 39 month period are typically charged a higher automotive insurance premium than persons with a "clear" driving record. It is difficult to quantify the added costs as the rates charged by the various agencies for the same coverage vary greatly.

Traffic survival schools may experience moderate to substantial benefits as the Division requires a person who accumulates between 8 to 12 points in the 12-month period to attend traffic survival school as a condition of licensure. Costs for traffic survival school range from $45 to $125 per session.

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

The Division anticipates no additional administrative costs associated with this rulemaking as the Division already has a driver point assessment system and reinstatement process in place.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Celeste M. Cook, Administrative Rules Analyst

Address: Administrative Rule Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 530M
Phoenix, AZ 85007

Telephone: (602) 712-7624

Fax: (602) 712-3081

E-mail: ccook@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Persons to bear costs:

Arizona Department of Transportation, Motor Vehicle Division

Arizona Courts

Persons convicted of violating traffic regulations governing the movement of vehicles

Persons to benefit:

General public

Insurance agencies

Traffic Survival Schools

3. Cost-benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $1,000

Moderate $1,000 to $9,999

Substantial $10,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

On an annual basis, the Division incurs substantial costs to record, assess, and maintain driver records and take the required action when applicable. However, the driver point assessment system fulfills the Division's statutory obligations under A.R.S. § 28-3306(A)(3) and protects the general public.

The Division anticipates no additional administrative costs associated with this rulemaking as the Division already has a driver point assessment system and reinstatement process in place.

The Division anticipates the Secretary of State and the Governor's Regulatory Review Council (GRRC) will incur the minimal costs associated with the rulemaking process.

The Division anticipates that it will benefit from a rule that is more clear, concise, and understandable.

b. Probable costs and benefits to political subdivisions of this state directly affected by the implementation and enforcement of the proposed rule:

The Division anticipates that political subdivisions will incur no additional costs as a result of this rulemaking.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

The Division anticipates that businesses will incur no additional costs as a result of this rulemaking.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking:

The Division anticipates no economic impact on public employment or political subdivisions as a result of this rulemaking.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Traffic survival schools

Insurance agencies

b. Administrative and other costs required for compliance with the proposed rulemaking:

The Division anticipates no administrative or other costs for small businesses associated with this rulemaking.

c. Description of the methods the Arizona Department of Transportation may use to reduce the impact on small businesses:

Because small businesses are generally not affected by this rule, no cost reduction is necessary.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

In 2006, 2,490 persons were convicted of a violation of A.R.S. § 28-1383 and in 2007, 2,394 persons were convicted of a violation of A.R.S. § 28-1383. The Division anticipates that this rule will require approximately 2,390 private persons to attend traffic survival school.

A person ordered to attend traffic survival school will incur minimal costs.

A person reinstating the driving privilege will incur minimal costs.

A person purchasing an automotive insurance policy may incur minimal to moderate costs, depending on the person's driving record and the insurance agency.

Arizona's motoring public benefits from the provisions of this rule in assurance of that state's earnest attempt to promote and enhance public safety. Despite the fact that this assurance to the public is non-quantifiable and may not prevent every impaired motorist from operating a motor vehicle on a public highway, it is the principal reason for the provisions of this rulemaking.

6. **Statement of probable effect on state revenues:**

   The Division anticipates no economic impact to state revenues.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:**

   The Division has determined that there is no less intrusive or less costly method that would fulfill the requirements of A.R.S. § 28-3306(A)(3).

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic small business and consumer impact statement.

The agency believes it has sufficient data for accurate assessment of this rulemaking's impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

R17-4-404

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

A.R.S. § 32-2352(C), as amended by Laws 2010, Ch. 202, § 6 and Laws 2011, Ch. 190, § 29, authorizes the Director of the Arizona Department of Transportation (Director) to contract with a private entity to conduct inspections and administer the licensure process for professional driver training schools in accordance with rules adopted by the Director. Traffic survival schools are a type of professional driver training school. The Director has entered into a contract with a private entity to perform the statutorily prescribed functions. A.R.S. § 32-2353(C)(2) allows the private entity to charge a fee to each person who enrolls in a traffic survival school. This proposed rulemaking amends the rule relating to the licensure and administration of traffic survival schools to facilitate the performance of the private entity's contract requirements.

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

Before the private entity contractor began administering the traffic survival school program, the Department had licensed 74 traffic survival schools and 143 traffic survival school instructors. There were 112 traffic survival school license applicants on a wait list. Since the private entity contractor began administering the traffic survival school program on February 10, 2013, 26 additional schools have been licensed, 60 additional branch sites have been licensed, and 29 additional instructors have been licensed.

In fiscal year 2012, 60.9% of the individuals assigned to traffic survival schools completed traffic survival school courses. In fiscal year 2013, the completion rate was 65%. The completion rate during the five months since the private entity contractor began administering the program is 70.9%.

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:

If this new rule is not adopted, the ability of the Department and the private entity contracted pursuant to A.R.S. § 32-2352(C) to perform their contractual obligations will be negatively impacted. The private entity was selected through the state procurement process (A.R.S. Title 41, Chapter 23) and is fulfilling the terms of the contract by providing a revised course curriculum and training instructors on the curriculum; providing all enrollees with a student workbook for the traffic survival school course; handling traffic survival school related phone calls from assigned individuals, including individuals residing out-of-state; printing and mailing all traffic survival school assignment and suspension orders;

allowing new schools to apply for licensure; allowing previously licensed traffic survival schools to expand their operations; and developing electronic course enrollment and course completion processes.

c. **The estimated change in frequency of the targeted conduct expected from the rule change:**
Licensed traffic survival schools will not have to turn individuals away from their courses if the individuals do not provide proof they were required to attend traffic survival school because the electronic enrollment process allows them to verify enrollees. Licensed traffic survival schools also will save time by no longer having to request, complete, mail, and store paper forms for enrollees and will save money by eliminating shipping and handling costs previously associated with processing the paper forms. More individuals ordered to attend traffic survival school will complete traffic survival school courses in a timely manner.

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

Before the private entity contractor began administering the traffic survival school program, the Department had licensed 74 traffic survival schools and 143 traffic survival school instructors. There were 112 traffic survival school license applicants on a wait list. Since the private entity contractor began administering the traffic survival school program on February 10, 2013, 26 additional schools have been licensed, 60 additional branch sites have been licensed, and 29 additional instructors have been licensed.

In fiscal year 2012, 60.9% of the individuals assigned to traffic survival schools completed traffic survival school courses. In fiscal year 2013, the completion rate was 65%. The completion rate during the five months since the private entity contractor began administering the program is 70.9%.

The private entity contracted pursuant to A.R.S. § 32-2352(C) was selected through the state procurement process and is fulfilling the terms of the contract by providing a revised course curriculum and training instructors on the curriculum; providing all enrollees with a student workbook for the traffic survival school course; handling traffic survival school related phone calls from assigned individuals, including individuals residing out-of-state; printing and mailing all traffic survival school assignments and suspension orders; allowing new schools to apply for licensure; allowing previously licensed traffic survival schools to expand their operations; and developing electronic course enrollment and course completion processes. This proposed rulemaking amends the rule relating to the licensure and administration of traffic survival schools to facilitate the performance of the private entity's contract requirements.

The Department will realize regular annual savings that include no longer having to print course completion forms, traffic survival school assignments, and suspension orders; purchase office and operational supplies; and pay postage fees and archival fees. The Department will also achieve the annual efficiency of employee work hours saved because of manual processes that have been eliminated.

Licensed traffic survival schools will save substantial time by no longer having to request, complete, mail, and store paper forms for enrollees, and schools will save money by eliminating shipping and handling

costs previously associated with processing the paper forms. This rulemaking and the contract it facilitates will also benefit licensed traffic survival schools because the electronic enrollment process will allow the schools to verify that prospective enrollees are in fact required to attend traffic survival school. Without that process, licensed traffic survival schools previously had to turn individuals away from their courses if the individuals could not provide proof they were required to attend traffic survival school. Some licensed schools may have to purchase a computer, a printer, and printing supplies in order to use the electronic processes and teach the required curriculum.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Holly B. Hunnicutt

Address: Government Relations and Policy Development Office
Arizona Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-4284

Fax: (602) 712-3232

E-mail: HHunnicutt@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Persons to bear costs	Persons directly benefiting
Arizona Department of Transportation	Arizona Department of Transportation
The private entity contracted pursuant to A.R.S. § 32-2352(C)	The private entity contracted pursuant to A.R.S. § 32-2352(C)
Traffic survival schools	Traffic survival schools
	Traffic survival school enrollees

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than $1,500
Moderate	$1,500 to $99,999
Substantial	$100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The Department spent $128,000 in one-time computer programming costs to enable the electronic processes associated with traffic survival schools to be fully developed under the contract. These processes are estimated to provide the Department with $44,199 in hard annual savings that include no longer having to print course completion forms, traffic survival school assignments and suspension orders; purchase office and operational supplies; and pay postage fees and archival fees and $104,063 in annual efficiency savings for employee hours saved for manual processes that have been eliminated. The electronic processes help to reduce the number of customers at the Department's Motor Vehicle Division Customer Service Offices and eliminate the potential for paper forms to be used in a fraudulent manner. The savings to the Department are substantial.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking:

Not applicable

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

Licensed traffic survival schools will save substantial time by no longer having to request, complete, mail, and store paper forms for enrollees and money by eliminating shipping and handling costs previously associated with processing the paper forms. Licensed traffic survival schools that previously had to turn individuals away from their courses if the individuals could not provide proof they were required to attend traffic survival school benefit from the contract and this rulemaking because the electronic enrollment process allows them to verify enrollees. In fiscal year 2012, the average size of a traffic survival school course was 14 students. Assuming that it takes five minutes to complete a handwritten certificate of completion form, for an average class it would take 70 minutes to complete the forms. Under this rule, the completed forms would be electronically submitted to the Department real-time. Moreover, the students receive the printed certificates of completion immediately on class completion. This facilitates the students immediately reinstating their driver licenses if they were suspended.

Some licensed schools may have to purchase a computer, a printer, and printing supplies in order to use the electronic processes and teach the curriculum. Retail price ranges for equipment and supplies from Office Max, Staples, Fry's Electronics, and Wal-Mart are as follows: A printer is $29.00 to $129.99, a cartridge/toner is $14.98 to $39.99, and a ream of paper (500 count) is $3.00 to $6.00. In addition, some licensed schools may have to subscribe to an internet service plan in

order to comply with the electronic process. Basic business internet service starter plans range from $29.99 to $74. The costs to licensed traffic survival schools are minimal. All licensed schools, however, benefit from the reduced postage and supply expenses. The cost to a school of mailing a 3 ounce or 10 ounce package to the Department using two-day priority mail is $5.05. The cost of 9' x 12' manila envelopes is 21 cents per envelope using ADOT's government contract discount. If a school was to purchase envelopes as needed, it may cost them $1.10 to $3.00 per envelope.

4. **General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:**

   This rulemaking may result in increased numbers of licensed traffic survival schools and locations; thereby, providing more employment opportunities for instructors and other personnel. Licensed traffic survival schools are also leasing and occupying rental space; thereby, positively impacting commerce in their local communities.

5. **Statement of the probable impact of the proposed rulemaking on small businesses:**

   a. **Identification of the small businesses subject to the proposed rulemaking:**

      Some licensed traffic survival schools may be small businesses as defined in A.R.S. § 41-1001(20).

   b. **Administrative and other costs required for compliance with the proposed rulemaking:**

      Some licensed schools may have to purchase a computer, a printer, and printer supplies in order to use the electronic processes and teach the curriculum.

   c. **Description of the methods that ADOT may use to reduce the impact on small businesses:**

      The cost of licenses and the licensing function is uniform regardless of business size. Moreover, license costs themselves are minimal. The increased use of automation has reduced and will continue to reduce costs for small business.

   d. **Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:**

      Individuals assigned to traffic survival school benefit from having a greater number of options available to them for selecting where and when to attend a traffic survival school course because more new schools and locations are being approved by the private entity contracted pursuant to A.R.S. § 32-2352(C). Individuals who complete a traffic survival school course have their satisfactory completion reported electronically real-time through the private entity to the Department, which allows those individuals with suspended driving privileges the ability to reinstate promptly and without having to visit one of the Department's Motor Vehicle Division Customer Service Offices. Pursuant to A.R.S. § 32-2352(C)(2), the private entity may charge a fee to each person who enrolls in a traffic survival school. Pursuant to the contract between the private entity and the Department, the rate of this fee is currently $37 per enrollee.

6. **Statement of the probable effect on state revenues:**

The Department will have hard annual savings that include no longer having to print course completion forms, traffic school assignments, and suspension orders; purchase office and operational supplies; and pay postage fees and archival fees and annual efficiency savings for employee hours saved for manual processes that have been eliminated.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:

In rulemaking, the Department routinely adopts the least costly and most practicable and effective options for any process or procedure required of the regulated public or industry.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION – TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

R17-4-404, R17-4-406, & R17-4-409

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation, Motor Vehicle Division has amended rules to clarify driver-license and identification requirements, update related citations, and eliminate provisions contained within statute. This rulemaking is initiated in accordance with a Five-Year Rule Review Report approved by the Council in September 2003, and Laws 2006, Ch. 297 § 1.

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

For FY 2005/2006 the Division processed 89,208 original and renewal applications for a Driver License for Identification Purposes Only. Additionally, 39 original and renewal driver licenses and 57,485 learner's permits for applicant age 17 and under were processed for this same period.

As stated above the objective of this rulemaking is to update and clarify current rule language. The only amendment which has the appearance of being of substance is the repeal of R17-4-409(B)(7), which allows an applicant for a License for Identification Purposes Only to submit to the Division a notarized affidavit signed by two adults as satisfactory proof of the name and date of birth of an applicant. Therefore this economic impact statement will only address the repeal of this subsection.

The rules under R17-4-409 were adopted on November 30, 1983. Since that time many amendments to both federal and state laws have been enacted which makes R17-4-409 inconsistent with federal and state laws.

While the rule remained "on the books," it has not been the practice of the Division to allow an applicant to obtain a Driver License for Identification Purposes under R17-4-409(B)(7). The Division has however, had in effect a policy detailing acceptable documentation to prove an applicant's name and date of birth, as well as has the information published on the Division's website, within the Division's Customer Service Manual, as well as posted at each field office. In fact the Division has not had an applicant present a notarized affidavit signed by two adults to prove name and date of birth in more than 14 years.

To obtain a Driver License for Identification Purposes an applicant must submit to the Division one form of primary identification and two forms of secondary identification.

In an attempt to achieve conformity within all the state's MVDs, 45 states follow the guidelines of the American Association of Motor Vehicle Administrators (AAMVA). AAMVA represents the state and provincial officials in the United States and Canada who administer and enforce motor vehicle laws. AAMVA's programs encourage uniform application of federal laws and reciprocity among the states and provinces.

Based upon federal regulations AAMVA has established the acceptable documentation to validate an individual's name and date of birth (attached), of which there are 19 forms of primary documentation and 23 forms documents allowed as secondary to establish name and date of birth of applicant.

3. **Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

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

B. Economic, small business and consumer impact statement

1. **Identification of the proposed rulemaking:**

See paragraph (A)(1) above.

2. **Identification of persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:**

Persons to bear costs	**Persons to benefit**
None	Citizens of Arizona Arizona Businesses

3. **Cost-benefit analysis**

Cost-revenue scale

Annual costs or revenues are defined as follows:

Minimal less than $1,000
Moderate $1,000 to $9,999
Substantial $10,000, or more

a. Probable costs and benefits to ADOT and other agencies:

There is no anticipated economic impact to the ADOT except for those resources necessary for rulemaking.

b. Probable costs and benefits to political subdivisions:

Notwithstanding (A)(2), political subdivisions benefit as the chance of fraudulent activities by an applicant is minimized as only applicants whose name and date of birth can be validated are approved for a Driver License for Identification Purposes Only.

c. Probable costs and benefits to businesses:

The Division anticipates no economic impact to businesses as a result of this rulemaking. See (3)(B)

4. Probable impact on public and private employment:

The Division does not anticipate an economic impact on public or private employment as a result of these rules. See (3)(B)

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Business that requires a valid form of identification issued by the Division and which are also identified under A.R.S. § 41-1001(19) will benefit by the Division's validation of an applicant's name and date of birth. The chance of fraudulent activities by an applicant is minimized due to the Division's efforts.

b. Administrative costs and other costs required for compliance:

The Division anticipates no administrative or other costs associated with this rulemaking.

c. Description of the methods used by ADOT for reduction of impact on small businesses:

The Division's listing of acceptable documentation to prove name and date of birth for a Driver License for Identification Purposes is extensive and conforms to a majority of other state requirements.

d. Probable costs and benefit to private persons and consumers:

The Division anticipates no impact to private persons or consumers as a result of this rulemaking. See (3)(B)

6. Probable effect on state revenues:

The Division anticipates no economic impact to state revenues.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking:

In an attempt to achieve conformity within the state motor vehicle departments, all but five states have followed the guidelines of AMMVA. Of which there are 19 forms of primary documentation and 23 documents allowed as secondary to establish name and date of birth of an applicant.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business.

None

TITLE 17. TRANSPORTATION

CHAPTER 4. ARIZONA DEPARTMENT OF TRANSPORTATION

MOTOR VEHICLE DIVISION

ARTICLE 7. MISCELLANEOUS RULES

R17-4-709 and R17-4-709.01 to R17-4-709.10 Ignition Interlock Device Program Rules Year 2000 Update

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking:

An ignition interlock device is a device designed to be installed in a vehicle, to measure a driver's breath alcohol concentration, and to prevent starting the vehicle when the driver's breath alcohol concentration is at or above a preset level. The driver must breathe into the device and provide an acceptable breath sample. The device allows the vehicle ignition switch to start the engine only when the breath sample is below the alcohol setpoint. As required by statute, the Arizona Department of Transportation, Motor Vehicle Division (Division) began the Arizona ignition interlock device program in 1998 to reduce repeat DUIs.

This rulemaking action updates the Arizona ignition interlock device program by conforming the program's rules, now R17-4-709 and R17-4-709.01 to R17-4-709.10, to statutory changes enacted during the 2000 legislative session. The Division amended 3 of the rules and Appendix A and added new R17-4-709.10. Additionally, the Division added Form B Ignition Interlock Installer Bond as a 2nd acceptable bond form for authorized installers, and changed R17-4-709.09 to include Form B.

The statutory changes affecting the ignition interlock device program require a 1-year, Division-issued certified ignition interlock device (CIID) order when a person has a conviction by an Arizona court for:

- A DUI under A.R.S. § 28-1381 committed after September 30, 2000, and a conviction for a DUI, an extreme DUI, or an aggravated DUI committed within 5 years before the current DUI violation;
- An extreme DUI under A.R.S. § 28-1382 committed after September 30, 2000; or
- An aggravated DUI under A.R.S. §§ 28-1383(A)(1), 28-1383(A)(2), or 28-1383(A)(3)(b) committed after September 30, 2000.

An Arizona court convicting a person of an offense listed above and committed after September 30, 2000, may issue a CIID order for more than 1 year. An Arizona court or Division CIID order takes effect on the date the person reinstates the driving privilege after suspension or revocation. Finally, statutory changes to A.R.S. § 28-1464(I) require a Division-issued CIID-order extension of no more than 1 year if the person subject to the order:

- Operates an employer's motor vehicle in violation of a requirement in A.R.S. § 28-1464(A);
- Rents, leases, or borrows a motor vehicle in violation of the notification requirement in A.R.S. § 28-1464(C);

- Asks or allows another person to breathe into a CIID in violation of A.R.S. § 28-1464(D);
- Tampers with or evades a CIID in violation of A.R.S. § 28-1464(F); or
- Operates a motor vehicle without a CIID in violation of A.R.S. § 28-1464(H).

The final rules:

- Replace "R17-4-709.09" with "R17-4-709.10" in R17-4-709, line 1;
- Add the phrase "or the Division" to the definition of "participant" in R17-4-709, to R17-4-709.04(B), and to Appendix A, line 4;
- Add the phrase "or Division" to Appendix A, line 5 and to the last line of Appendix A;
- Add the phrase "or Division order" to R17-4-709.07(B);
- Change R17-4-709.09(B) to state: "Form A Ignition Interlock Installer Bond and Form B Ignition Interlock Installer Bond, which follow this Section, are the approved bond forms;"
- Add "or Form B" to R17-4-709.09(C)(3);
- Replace "the approved bond form" to "an approved bond form" in R17-4-709.09(D);
- Add Form B, approved by the Division Director on June 21, 2000, that shows the new Arizona Department of Transportation logo and is otherwise identical to Form A;
- Add R17-4-709.10 to give effect to A.R.S. § 28-1464(I) by establishing a mandatory 1-year extension by the Division of a CIID order when the person subject to the order is convicted of any of the specified violations;
- Change R17-4-709.04(A) from "A manufacturer shall notify the Division in writing of any material modification of a certified ignition interlock device model" to "A manufacturer shall notify the Division in writing at least 10 days before a material modification is made to a certified ignition interlock device model;"
- Add R17-4-709.04(C) that states: "The Division's certification of a materially modified ignition interlock device model does not affect the original certification of the unmodified model;"
- Change R17-4-709.10(B) from "Each conviction for a violation of A.R.S. § 27-1464(A), § 28-1464(C), § 28-1464(D), § 28-1464(F), or § 28-1464(H) will result in an extension by the Division of a participant's certified ignition interlock device order" to "For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order;"

- Change the word "participant's" to "person's" and the word "will" to "shall" in R17-4-709.10(C); and
- Make minor changes indicated by the Governor's Regulatory Review Council staff.

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

In 1998 The Division determined that the Arizona ignition interlock device program, mandated by statute, has economic consequences. The Division also determined that the reduction of future DUIs and the increase in business opportunities resulting from the program outweigh the costs to the Division, other government agencies, political subdivisions, ignition interlock device manufacturers, authorized installers, independent laboratories, insurance and surety companies, and people ordered to have CIIDs installed in their vehicles. Statutory changes, effective October 1, 2000, expand the program. This program expansion increases the Division's costs. However, program expansion might reduce costs or increase benefits for ignition interlock device manufacturers, authorized installers, insurance and surety companies that issue authorized installer bonds, and drivers subject to CIID orders.

The year 2000 statutory changes expand the Arizona ignition interlock device program by requiring the Division to issue CIID orders and extensions of CIID orders. This requirement results in computer-programming costs, CIID-notice costs, and employee-training costs to the Division.

As of September 30, 2000, the Division received 5 ignition interlock device certification applications from 4 manufacturers and approved 5 devices for certification. As of September 30, 2000, Arizona courts issued 1357 CIID orders, and 14 ignition interlock devices were installed. As of September 2, 2000, Arizona courts handed down 19,631 convictions for DUI (16,175), extreme DUI (1942), and aggravated DUI (1514) offenses committed in 1999. Beginning with the year 2001, the Division expects issuance of approximately 6000 CIID orders and CIID-order extensions a year. A person who fails to comply with a CIID order remains unlicensed.

The economic impact of the DUI Abatement Council and the DUI Abatement fund results from A.R.S. §§ 28-1303, 28-1304, 28-1382, and 28-1383. Annual reporting costs incurred by the Arizona Supreme Court's Administrative Office of the Courts, the Division, county attorneys, municipal prosecutors, and the Governor's Office of Highway Safety result from A.R.S. § 28-1442, added by Laws 2000, Ch. 153, § 4.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Lynn S. Golder Hearing Officer II
Arizona Department of Transportation
Motor Vehicle Division, Mail Drop 507M
3737 North 7th Street, Suite 160
Phoenix, Arizona 85014-5017

B. Economic, small business and consumer impact statement

1. **Identification of the proposed rulemaking:**

   See paragraph (A)(1) above.

2. **Identification of persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:**

   Final rules R17-4-709 to R17-4-709.10 directly affect the following entities and people:

   a. The Division;

   b. The Department of Health Services, Arizona Secretary of State, Governor's Regulatory Review Council, and Governor's Office of Highway Safety;

   c. The Administrative Office of the Courts and Arizona courts;

   d. County attorneys and municipal prosecutors,

   e. Ignition interlock device manufacturers;

   f. Authorized installers;

   g. Independent laboratories;

   h. Insurance and surety companies;

   i. Arizona ignition interlock device program participants and their families;

   j. The DUI Abatement Council and DUI Abatement Fund; and

   k. The general public and users of Arizona roads.

3. **Cost-benefit analysis**

   Cost-revenue scale

   Annual costs or revenues are designated as follows:

   Minimal - less than $1000

   Moderate - between $1000 and $10,000

   Substantial - more than $10,000

   a. Probable costs and benefits to the Motor Vehicle Division and other agencies:

   The Division incurs the following costs from the IID program rules:

   i. $134,750 for computer programming, including programs to capture data for reporting to the DUI Abatement Council and the Governor's Office of Highway Safety;

   ii. $1500 for issuing approximately 6000 computer-generated CIID orders and CIID-order extensions annually, including paper, envelopes, and postage;

   iii. $1707 for training for employees of the records, communications, and technical support units;

   iv. $2000 for the initial cost of processing manufacturers' applications for ignition interlock device model certification and an annual cost of $1000;

   v. $40,000 for enforcement unit personnel to review documents submitted and conduct audits of participant records retained by authorized installers and manufacturers; and

   vi. Minimal to moderate costs for this rulemaking action, including the development of a 2nd acceptable ignition interlock installer bond form. Form B was approved by the Division Director on June 21, 2000, shows the new Division logo, and is otherwise identical to Form A.

The Governor's Regulatory Review Council incurs moderate costs to review this rulemaking action updating the Arizona ignition interlock device program rules.

The Arizona Secretary of State's Office incurs moderate costs to publish a notice of 25 to 50 pages. The Notice of Proposed Rulemaking and Notice of Final Rulemaking in this rulemaking action total 28 pages, representing a moderate cost.

The Arizona Department of Health Services incurs minimal to moderate costs for review, at the request of the Motor Vehicle Division, of independent laboratory reports submitted by ignition interlock device manufacturers.

The Governor's Office of Highway Safety incurs moderate to substantial costs to review A.R.S. § 28-1442 reports from the Administrative Office of the Courts (AOC), the Division, county attorneys, and municipal prosecutors and to prepare a report for the legislature. Similarly, the AOC, the Division [see paragraph (B)(3)(a)(i)], county attorneys, and municipal prosecutors incur moderate to substantial costs to report to the Governor's Office of Highway Safety.

Arizona courts incur minimal to moderate costs for issuing CIID orders and providing CIID-order information to the Division.

The DUI Abatement Fund, administered by the DUI Abatement Council, receives $1,000,000 from $250 assessments collected from approximately 4000 people convicted of extreme DUI under A.R.S. § 28-1382 or aggravated DUI under A.R.S. § 28-1383. The DUI Abatement Council incurs substantial costs for analysis of statistical data, preparation of reports and recommendations, and disbursement of substantial amounts from the DUI Abatement Fund for DUI abatement programs. The costs and benefits to the Council and Fund result from statutory requirements, not from the Arizona ignition interlock device program rules.

b. Probable costs and benefits to political subdivisions:

The moderate to substantial reporting costs incurred by county attorneys and municipal prosecutors result from the requirements of A.R.S. § 28-1442.

c. Probable costs and benefits to businesses:

Ignition interlock device manufacturers and installers benefit from the increase in business opportunities provided by the Arizona ignition interlock device program. The Division has certified 5 ignition interlock device models provided by 4 manufacturers: Alcohol Sensors Technology, Autosense International, Lifesafer Interlock, Inc. (2 models), and Drager. The Division has certified each ignition interlock device model for which a manufacturer submitted an application. Under the expanded program, the Division anticipates approximately 6000 CIID orders and CIID-order extensions annually after the year 2000. Program expansion makes applications to certify additional ignition interlock device models probable.

Ignition interlock device manufacturers' costs and income:

i. Initial costs of $100,000, including $15,000 to $20,000 for certification of each ignition interlock device model; and

ii. Annual costs of $750,000 to provide 2,000 ignition interlock devices, with annual income of $1 million from 2,000 devices.

Authorized installers' costs and income:

i. Initial costs of $50,000 including the purchase of territorial rights from the manufacturer, the purchase of equipment, and the premium for a $25,000 ignition interlock installer bond;

ii. Annual costs of $1.5 million to purchase or lease 2,000 CIIDs from the manufacturer and to install, maintain, service, and remove 2,000 devices, with annual income of $2 million from 2,000 (based on $100 installation fee and $75 monthly service fee per CIID); and

iii. No additional costs from Form B Ignition Interlock Installer Bond.

Independent laboratories that test ignition interlock devices for manufacturers incur minimal to moderate costs to test a device and to prepare a laboratory report and laboratory certification form for the device. In turn, the independent laboratories receive moderate income for testing a device.

Insurance and surety companies benefit substantially from issuing product liability insurance for ignition interlock device models to manufacturers and ignition interlock installer bonds to authorized installers. Insurance and surety companies incur substantial costs to provide indemnification under product liability policies and to satisfy claims under bonds. Insurance and surety companies have no additional costs from Form B Ignition Interlock Installer Bond.

d. Cost-benefit summary and conclusion:

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
Motor Vehicle Division – rulemaking, installer bond form development, issuing CIID orders and CIID-order extensions, and carrying out and reporting on the ignition interlock device program	Substantial	None
Secretary of State's Office – printing of rulemaking notices	Moderate	None
Governor's Regulatory Review Council – review and approval of regular rulemaking	Moderate	None
Department of Health Services – review of independent laboratory reports on ignition interlock device models	Minimal to moderate	None

Governor's Office of Highway Safety – report review and preparation under A.R.S. § 28-1442	Moderate to substantial	None
Administrative Office of the Courts – A.R.S. § 28-1442 reporting	Moderate to substantial	None
Arizona courts – issuing CIID orders and providing CIID-order information to the Division	Minimal to moderate	None
County attorneys and municipal prosecutors – A.R.S. § 28-1442 reporting	Moderate to substantial	None
Manufacturers – production of ignition interlock devices, obtaining model certification from the Division, oversight of authorized installers, and certification retention	Substantial	Substantial
Authorized installers – obtaining and maintaining an installer bond; installation, maintenance, and removal of CIIDs; and record keeping related to CIIDs	Substantial	Substantial
Independent laboratories – testing of ignition interlock device models and preparation of laboratory reports and laboratory certification forms	Minimal to Moderate	Moderate
Insurance and surety companies – issuance of ignition interlock device model product liability policies and installer bonds	Substantial	Substantial
Ignition interlock device program participants and their families – equipping and operating vehicles with CIIDs	Moderate Also non-pecuniary costs related to CIID use, including time and inconvenience	Non-quantifiable pecuniary benefits and non-pecuniary benefits related to avoiding future DUIs
DUI Abatement Council and DUI Abatement Fund – review of Arizona IID program, analysis of statistical data, preparation of report, and disbursement of funds	Substantial	Substantial

General public and users of Arizona roads	None	Non-quantifiable pecuniary benefits and non-pecuniary benefits related to reduction in DUI recidivism and increased safety

4. Probable impact on public and private employment:

The Arizona ignition interlock device program has no impact on public employment. The program has the potential to create private sector jobs in businesses that manufacture ignition interlock devices, install the devices, test device models, issue product liability insurance for device models, and issue ignition interlock installer bonds.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

The Arizona ignition interlock device program rules, now R17-4-709 and R17-4-709.01 to R17-4-709.10, affect the following businesses that employ fewer than 100 full-time employees and had gross annual receipts of less than $4 million in their last fiscal year:

i. Ignition interlock device manufacturers,
ii. Ignition interlock device installers,
iii. Independent laboratories that test ignition interlock device models,
iv. Insurance companies that issue product liability insurance for ignition interlock device models, and
v. Surety companies that issue ignition interlock installer bonds.

b. Administrative costs and other costs required for compliance:

This rulemaking action updates the Arizona ignition interlock device program rules to conform to statutory changes enacted during the 2000 legislative session. Administrative costs and other costs for compliance with the program result from statutory requirements.

c. Description of the methods used by the Motor Vehicle Division for reduction of impact on small businesses:

The business opportunities for ignition interlock device manufacturers, installers, independent laboratories, and insurance and surety companies resulting from the Arizona ignition interlock device program outweigh the costs to those businesses.

d. Probable costs and benefits to private persons and consumers:

Arizona ignition interlock device program participants incur moderate costs to comply with a Division or court order to equip each vehicle they operate with a CIID, based on an installation cost of $75 to $100 and monthly lease and servicing cost of $65 to $75.

The participant and family members who operate a vehicle equipped with a CIID must properly blow into the device and have an alcohol concentration below .03 to start the vehicle. Additionally, participants and family members must properly blow into the device and have an alcohol concentration below .03 during the operation of the vehicle. Finally, participants must present an installed CIID for accuracy checks by an authorized installer 30, 60, and 90 days after installation, then at least every 60 days.

Participants benefit from avoiding future DUIs.

The general public and users of Arizona roads benefit for the reduction in DUI recidivism and the increased safety that results.

6. Probable Effect on State Revenues:

The DUI Abatement Fund receives substantial funds from additional assessments by Arizona courts against people convicted of extreme DUI and aggravated DUI. The DUI Abatement Council incurs substantial costs to review and report on the Arizona ignition interlock device program.

7. Less intrusive or less costly alternatives methods of achieving the proposed rulemaking:

The Division was unable to devise less intrusive or less costly CIID regulation that also provides adequate criteria for ignition interlock device certification and reliability and accuracy assurance. The Arizona ignition interlock device program, implemented by R17-4-709 and R17-4-709.01 to R17-4-709.10, increases business opportunities for ignition interlock device manufacturers and installers, independent laboratories, and insurance and surety companies.

C. Explanation of the limitations of the data available for subsection (B) of this economic, small business and consumer impact statement:

The Division does not have precise figures available for costs and benefits to independent laboratories and insurance and surety companies.

The Division is unable to quantify the non-pecuniary costs to participants in the Arizona ignition interlock device program and their families. The Division is also unable to quantify the benefits to participants from avoiding future DUIs. Finally, the Division is unable to quantify the benefit to the general public and users of Arizona roads from the reduction in DUI recidivism resulting from the program. This benefit includes lower health care costs and lower motor vehicle liability insurance costs resulting from fewer alcohol-related accidents.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-101, R17-4-407, and R17-4-409

A. Economic, small business and consumer impact summary

1. Identification of the rulemaking:

The Department engages in this rulemaking, as required under A.R.S. § 41-1008(E), to permanently codify a $25 application fee initially established by the Department through exempt rulemaking at 22 A.A.R. 819, April 15, 2016, for issuance of an Arizona driver license or identification license deemed by the U.S. Department of Homeland Security (DHS) as issued in compliance with the federal Real ID Act of 2005, Public Law 109–13, 119 Stat. 302.

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

Although the federal REAL ID Act of 2005 did not mandate that all state licensing agencies issue secure driver licenses and non-operating identification licenses in full compliance with the federal regulations, the regulations do prohibit all federal agencies from accepting any state-issued driver license or non-operating identification license not issued in full compliance with the REAL ID Act of 2005, beginning October 1, 2020. This rulemaking will ensure that all Arizona driver license and non-operating identification license applicants have the option to request a credential that is issued by the Department in full compliance with all federal regulations regarding the state-issuance of secure credentials that can be accepted by federal agencies as proof of a person's identity for official purposes on and after October 1, 2020.

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:

If the Department were unable to continue issuing these secure travel-compliant credentials, a great number of Arizona residents would risk losing their ability to board a federally-regulated commercial aircraft or to gain access to restricted areas in federal facilities, such as nuclear power plants and military facilities beginning October 1, 2020, unless a valid passport or other federally approved identification is shown.

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

Since the Department currently issues these travel-compliant credentials on request of the applicant, as provided under A.R.S. § 28-3175 and R17-4-407, the U.S. Department of Homeland Security (DHS) has deemed that Arizona is in full compliance with the federal requirements of the REAL ID Act of 2005, and has agreed to continue accepting all existing standard-issue Arizona credentials at airport security and restricted federal facilities until October 1, 2020, at which point only the federally-

recognized Arizona travel-compliant credentials can be accepted in lieu of having to provide a current passport or other federally recognized documents.

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

Effective October 1, 2020, all federal agencies are prohibited from accepting, as proof of a person's identity, any state-issued driver license or non-operating identification license unless that license was issued in full compliance with the federal REAL ID Act of 2005.

As provided under A.R.S. § 28-3175, all applicants for an Arizona driver license or non-operating identification license now have the option to request issuance of a REAL ID compliant credential that can be accepted by federal agencies as proof of identity on and after October 1, 2020.

Application for this new travel-compliant credential must be made to the Department in person and each applicant is required to present certain federally-acceptable documents to the Department for verification of identity prior to issuance of the new credential. The Department collects the $25 application fee established under these rules when processing an original, reinstatement, or renewal application for any travel-compliant driver license class or an original or renewal application for a travel-compliant identification license, regardless of the application type (e.g. upgrade, downgrade, etc.).

Since a person seeking application and issuance of a travel-compliant credential under these rules does so voluntarily, as provided under A.R.S. 28-3175, the Department anticipates no significant economic impact to private persons or business entities as a result of this rulemaking. Other than the nominal $25 application fee prescribed, this rulemaking neither requires, nor prohibits, any action on the part of any private person or consumer and imposes no direct or indirect costs except to the Department as detailed below.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: John Lindley, Senior Rules Analyst
Address: Arizona Department of Transportation
Rules and Policy Development Office of the Director
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (602) 712-8804
E-mail: jlindley@azdot.gov
Website: https://www.azdot.gov/about/GovernmentRelations/contact-us

B. Economic, small business and consumer impact statement

1. Identification of the rulemaking:

The Department engages in this rulemaking, as required under A.R.S. § 41-1008(E), to permanently codify a $25 application fee the Department initially established by exempt rulemaking at 22 A.A.R. 819, April 15, 2016, for issuance of an Arizona driver license or identification license deemed by the U.S. Department

of Homeland Security (DHS) as issued in compliance with the federal Real ID Act of 2005, Public Law 109–13, 119 Stat. 302.

As provided under Laws 2015, Chapter 294 (HB2609), specifically A.R.S. § 28-3175, the Department must issue to a driver license applicant or a non-operating identification license applicant on request, a driver license or non-operating identification license that can be accepted by federal agencies as proof of identity for official purposes as defined under 6 CFR 37, which may include boarding a federally regulated commercial aircraft or gaining access to restricted areas in federal facilities, nuclear power plants, or military facilities.

2. **Identification of persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking:**

   Under this rulemaking, the Department identifies the following entities that may bear costs and receive benefits that may range from minimal to substantial:

Persons to bear costs	**Persons to directly benefit**
ADOT	ADOT
Arizona driver license or non-operating identification license applicants who request issuance of a secure credential that can be accepted by federal agencies as proof of identity	Arizona driver license or non-operating identification license applicants who request issuance of a secure credential that can be accepted by federal agencies as proof of identity
Local Businesses	Local Businesses
Political subdivisions	Political subdivisions

3. **Analysis of costs and benefits occurring in this state:**

   Cost-revenue scale. Annual costs or revenues are defined as follows:

   Minimal $9,999 or less

   Moderate $10,000 to $59,999

   Substantial $60,000 or more

   a. **Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the rulemaking:**

      These rules permanently codify the $25 fee currently charged by the Department for issuance of a driver license or non-operating identification license that can be accepted by federal agencies as proof of identity for official purposes as defined under 6 CFR 37. The Department and all other agencies that have traditionally had to carefully scrutinize a variety of official forms and other acceptable documentation to determine whether or not a person has presented valid proof of the person's identity when conducting business with the agency, will have added assurance that all documentation submitted to the Department on application for the Arizona travel-compliant driver license or non-

operating identification license was verified through official channels before issuance, and the travel-compliant credential can be trusted and relied on as proof of the person's identity while valid.

The Department has incurred substantial costs to ensure that all Department systems are in place to bring Arizona into full compliance with federal regulations regarding the state-issuance of secure credentials that can be accepted by federal agencies as proof of a person's identity for official purposes on and after October 1, 2020. The Department also incurs substantial costs annually for maintaining access to all required federal verification systems and services. However, since the Department is able to accomplish all of the new document verification requirements of the federal regulations electronically, only a minimal amount of additional time and work will be added to each transaction, so the Department believes that the nominal $25 application fee prescribed by these rules for issuance of the new secure travel-compliant driver license or non-operating identification license will be sufficient enough to allow the Department to operate and maintain this program at a level that is approximately equal to revenue, and no additional staffing is required.

To remain in full compliance with all federal regulations implementing the REAL ID Act of 2005, each state that issues compliant credentials must maintain access to multiple federal electronic identity verification databases, systems, web applications, and services for use in verifying all information and documentation a person may present in support of an application for a compliant driver license or non-operating identification license.

Therefore, any costs required for compliance with this rulemaking would be a result of both federal and state legislation and not necessarily a result of this rulemaking. The Department now maintains electronic access to multiple federal verification systems and services for use in accomplishing all of the required document verification, including the federal:

Driver's License Data Verification (DLDV) service;
Electronic Verification of Vital Events (EVVE) system;
Help America Vote Verification (HAVV) system;
Social Security Number Online Verification (SSOLV) service;
U.S. Passport Verification Service (USPVS);
U.S. Systematic Alien Verification for Entitlements (SAVE) program; and
U.S. Verification of Lawful Status (VLS) application.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking:

The Department anticipates no costs to political subdivisions of this state, however, political subdivisions should benefit from the added assurance that all documentation submitted to the Department on application for the Arizona travel-compliant driver license or non-operating identification license was verified through official channels before issuance, and the travel-compliant credential can be trusted and relied on as proof of the person's identity while valid.

The City of Phoenix, as the owner and operator of the Phoenix Sky Harbor International Airport, may experience the most significant benefit as a result of this rulemaking and the Department's ability to continue issuing these secure travel-compliant credentials. Phoenix Sky Harbor International Airport, as one of the ten largest International airports, and the U.S. Department of Homeland Security (DHS) Transportation Security Administration (TSA), should experience an increased ability to manage airport visitors, passengers, traffic, and cargo due to the greater ease of access and movement these secure credentials can help facilitate. As the number of travelers carrying these secure travel-compliant credentials begins to increase, airport operators may be encouraged to streamline existing security screening processes to facilitate the quick clearance of passengers for domestic travel. According to its website, the Phoenix Sky Harbor International Airport has a $106 million daily economic impact in Arizona. On a typical day more than 1,200 aircraft arrive and depart; about 120,000 passengers arrive and depart; and more than 800 tons of air cargo are handled.

c. Probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking:

Since this rulemaking neither requires, nor prohibits, any action on the part of any business, the Department anticipates no direct costs to businesses as a result of these rules. Any direct or indirect costs experienced by a business under these rules would be a result of the federal regulations created for implementation of the REAL ID Act of 2005, which prohibit federal agencies from accepting an Arizona driver license or non-operating identification license on and after October 1, 2020, unless the license is a secure travel-compliant credential issued by the Department in full compliance with all federal standards.

Businesses that routinely reimburse employees for costs associated with maintaining a valid driver license or non-operating identification license may experience a minimal increase in costs associated with converting each standard-issue Arizona driver license or non-operating identification license to a new secure travel-compliant credential that can be accepted by federal agencies as proof of identity for official purposes on and after October 1, 2020. Additionally, the new secure travel-compliant credentials are only issued or renewed by the Department for periods of up to eight years. However, the Department anticipates that these businesses will benefit significantly by the ease of movement their employees should experience going forward when traveling in furtherance of the business.

4. 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:

The transportation industry and consumers may experience a significant, but unquantifiable, benefit over the long term in the added ease of access and freedom of movement each holder of a travel-compliant driver license or identification license should achieve by not having to waste valuable time waiting in lines to be cleared for access by DHS or TSA when conducting business with federal authorities, accessing

federal facilities, boarding federally-regulated commercial aircraft, or entering secured areas like nuclear power plants.

If a business, agency, or political subdivision requires employees to obtain a travel-compliant driver license or identification license and the employee or job applicant does not qualify for the new credential for some reason, the employee or job applicant should have the ability to present other forms of identification the employer can accept as proof of identity for employment purposes.

Arizona employers are familiar with the federal E-Verify system, which is a free internet tool that all employers must currently use, as prescribed under A.R.S. § 23-214, to instantly cross-check information from an employee's federal I-9 form, against records from USCIS and the Social Security Administration, to verify whether or not a new employee is authorized to work in this country. Similar to the federal E-Verify system, the Department now uses the SAVE Program, which provides a fast, secure and efficient verification service for federal, state and local benefit-granting agencies to verify a benefit applicant's immigration status or naturalized/derived citizenship as one of several electronic verification processes made available for states and employers as provided under the federal legislation outlined below under section (B)(5)(b).

5. Statement of the probable impact of the rulemaking on small businesses:

The Department is committed to helping all Arizona small businesses succeed. This rulemaking does not create any significant economic impact on entities that meet the definition of a small business under A.R.S. § 41-1001, and should not affect the competitive position of any small businesses in relation to larger entities, or impede the cash flow, liquidity, or ability of small businesses to remain in the market. Additionally, this rulemaking imposes no new recordkeeping requirements on small businesses.

Business entities that require extensive domestic air travel by employees generally represent national or multi-national corporations that do not meet the definition of a small business under A.R.S. § 41-1001. However, the benefits that all businesses and employees can achieve with these travel-compliant credentials in ease-of-access and movement far outweigh the minimal application cost and any slight increase a business may experience if reimbursing the application fee paid by their employees for issuance of a travel-compliant credential.

a. Identification of the small businesses subject to the rulemaking:

Small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), include those with fewer than 100 employees or less than $4 million in annual receipts, and those that routinely reimburse employees for costs associated with obtaining or maintaining a valid Arizona driver license or non-operating identification license. These businesses may experience a minimal increase in operational costs if the businesses require their employees to hold a secure travel-compliant credential and the business intends to reimburse the $25 application fee paid by an employee to the Department for the issuance of a travel-compliant credential.

b. Administrative and other costs required for compliance with the rulemaking:

Each state is currently required to verify certain documentation when submitted by a person on application for a secure travel-compliant driver license or non-operating identification license. The verification processes required of the Department in these rules are the same as required by all Arizona employers under the laws, regulations, and programs associated with all of the following federal legislation:

The Immigration Reform and Control Act of 1986;

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996;

The Personal Responsibility and Work Opportunity Act of 1996; and

The Real ID Act of 2005.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

Since this rulemaking neither requires, nor prohibits, any action on the part of any small business, the rules impose no other direct or indirect costs on small businesses. Therefore, the Department anticipates no direct economic impact on small businesses as a result of this rulemaking, so reduction of the impact is not necessary.

All small businesses, private persons, and consumers whether directly or indirectly affected by this rulemaking will experience an unquantifiable, but significant, benefit from the strengthened reliability on which an employer can depend knowing that each employee's proof of identity was verified by the Department before the employee received the secure travel-compliant credential.

Arizona credentials issued by the Department before the availability of these travel-compliant credentials will be acceptable by federal authorities until October 1, 2020, at which point only the federally-recognized Arizona travel-compliant credentials can be accepted in lieu of having to provide a current passport or other federally recognized documents. For this reason, the Department has begun a publicity campaign to encourage early application for these new travel-compliant credentials.

Prior to May 2018, the Department processed between 3,000 and 4,000 applications for the new secure travel-compliant credentials each month. However, after reaching-out by email to more than 1.6 million existing Arizona driver license and non-operating identification license holders urging them to consider converting to a secure travel-compliant credential, the Department has begun processing up to 10,000 of these credentials each month.

However, Department records indicate that less than four percent of Arizona's current credential holders have requested a federally-recognized travel-compliant credential. As of March 1, 2019, the Department has issued 199,373 travel-compliant driver licenses, and 6,082 travel-compliant identification licenses, for a total of 205,455 secure credentials as follows:

License Class or Type:	Total Currently Issued Credentials	Standard-issue	Percentage of Total Currently Issued Credentials	Travel-compliant	Percentage of Total Currently Issued Credentials
Non-commercial Driver	5,217,607	5,025,204	96.31%	192,403	3.69%
Commercial Driver	108,716	101,746	93.59%	6,970	6.41%
Non-operating Identification	1,078,924	1,072,842	99.44%	6,082	.56%
Averaging:	**6,405,247**	**6,199,792**	**96.45%**	**205,455**	**3.55%**

d. Probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:

These rules permanently implement the standards and procedures necessary for the issuance of an Arizona travel-compliant driver license or non-operating identification license as an added public convenience. The rules do not require any holder of a standard-issue Arizona driver license or non-operating identification license to convert their existing credential to the new travel-compliant credential unless the person intends to use the Arizona driver license or non-operating identification license as proof of identity for acceptance by federal agencies on and after October 1, 2020.

Since a person seeking application and issuance of a travel-compliant credential under these rules does so voluntarily, as provided under A.R.S. 28-3175, the Department anticipates no significant economic impact to private persons or business entities as a result of this rulemaking. Other than the nominal $25 application fee prescribed, this rulemaking neither requires, nor prohibits, any action on the part of any private person or consumer and imposes no direct or indirect costs. The Department collects this application fee when processing an original, reinstatement, or renewal application for any travel-compliant driver license class or an original or renewal application for a travel-compliant identification license, regardless of the application type (e.g. upgrade, downgrade, etc.).

Currently, all standard-issue Arizona driver licenses and non-operating identification licenses issued by the Department clearly state on the face of the credential "Not for Federal Identification." However, existence of the federal disclaimer should not otherwise diminish reliance on any standard-issue Arizona credential as a reliable form of positive identification. Further, the Department does not anticipate any changes to existing federal facility admittance practices based on the Department's ability to issue these travel-compliant credentials under the rules if the federal facility does not currently require a person to present photo identification prior to entry.

Private persons and consumers who apply to the Department for a travel-compliant driver license or non-operating identification license must apply in person to one of the Department's Motor Vehicle Division field offices or Authorized Third Party Providers and present documentation that is recognized by the federal government as acceptable proof of identity and evidence of legal presence in

this country. The Department maintains a list of all documents that can be accepted as proof of identity on its website at www.azdot.gov.

Private persons and consumers issued a travel-compliant credential by the Department will need to renew that credential more often than is currently necessary, since federal law only allows the state to issue these credentials for periods of up to eight years. Arizona's standard-issue driver licenses or non-operating identification licenses can be issued for periods of up to the applicant's 65th birthday before renewal is necessary, except that everyone is required by law to have a new photo taken every 12 years.

The Department believes that these federally recognized travel-compliant credentials will become the preferred credentials for securing access to restricted federal facilities and conducting domestic travel through international airports in lieu of having to carry a passport or other qualifying documents. Additionally, the $25 fee collected by the Department for a federally-recognized travel-compliant Arizona driver license or identification license is nominal and provides the most cost effective way to expedite domestic travel for Arizona residents who prefer to apply for this new secure credential instead of having to apply for or renew a U.S. passport, which may cost more than $110.

While the benefits for Arizona's motoring public are not readily quantifiable, the Department believes that these rules maximize overall safety and are in the best interest of all highway users. The Department anticipates that both the public and businesses will appreciate the higher level of confidence they can all enjoy knowing that, if presented a secure travel-compliant credential issued under these rules, the credential holder's identity was appropriately verified by the Department before issuance.

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
ADOT	Substantial for the initial administrative and operating costs incurred	Minimal due to the break-even fee structure adopted by the Department for implementation of the new credentials
Political subdivisions	Minimal, if any	Minimal, if any
Businesses or consumers	Minimal to substantial depending on how many employees require conversion to the new credential and whether or not employers choose to reimburse employees who pay the application fee	Minimal to substantial depending on business nature and intended purpose

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
Arizona's motoring public	No direct cost	Not readily quantifiable in terms of public safety

6. **Statement of the probable effect on state revenues:**

   All driver license and non-operating identification license fees collected by the Department under these rules are deposited into the State Highway Fund as provided under A.R.S. § 28-6991(24) for use as authorized under A.R.S. § 28-6993 to carry out Department duties as prescribed under Title 28, Arizona Revised Statutes. This rulemaking is not expected to increase or decrease state revenues due to the break-even fee structure adopted by the Department for implementation of the new credentials.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

   In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. See (B)(5)(c) above.

   However, since state-issued driver licenses and non-operating identification licenses have over many years prevailed across the nation as the most generally used, accepted, and preferred document for verifying a person's identity, certain uniform standards for issuance of those documents have become increasingly necessary. Due to an ever-expanding reliance on state-issued driver licenses and IDs, they have become more susceptible to potential misuse in activities associated with identity fraud, which can clearly present serious risks to both national security and the economy. Aside from the different markings used to distinguish between driver licenses and non-operating identification licenses that are REAL ID-compliant and those that are not, the licenses look very similar to the latest generation of what the Department already issues. However, the new secure travel-compliant credentials have features designed to make them tamper-proof, including holograms, a second photo and raised lettering for the date of birth.

   The Department will continue providing the standard-issue Arizona driver license on collection of the age-appropriate fees provided under A.R.S. § 28-3002, and for a standard-issue Arizona non-operating identification license, the $12 fee as provided under A.R.S. § 28-3165 and R17-4-409.

8. **Description of any data on which the rulemaking is based with a detailed explanation of how the data was obtained and why the data is acceptable. "Acceptable data" means empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

   Since the costs and expenditures for small business employee reimbursements often vary by company size, industry, region and local interests, the Department is unable to anticipate, with any degree of certainty, whether or not this application fee would affect the bottom line of any business.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate

data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

As discussed above, the Department cannot provide any solid figures to illustrate the anticipated revenue this program is likely to affect since conversion from a standard-issue driver license or non-operating identification license to a new secure travel-compliant credential is completely voluntary, as provided under A.R.S. 28-3175.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION –

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

R17-4-410

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the rulemaking:

The Arizona Department of Transportation, Motor Vehicle Division (MVD) amends this Section to reflect current terminology used regarding voter registration through MVD. This Section provides for voter registration through MVD's ServiceArizona program or through MVD's driver license system in accordance with A.R.S. § 28-112. Additionally, grammatical and technical changes will be made to make the rule more clear, concise, and understandable.

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

The economic impact of this rulemaking is negligible. There are no costs to businesses resulting from this rulemaking. Private consumers will potentially benefit minimally in saved time and possibly also in mailing costs if opting for hardcopy voter registration. The rule merely makes changes to reflect the current terminology used and to make the rule more clear, concise, and understandable.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Troy A. Walters, Rules Analyst
Administrative Rules Unit
Department of Transportation, Mail Drop 530M
1801 W. Jefferson Street
Phoenix, AZ 85007
(602) 712-8994

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking:

Persons to bear costs	**Persons to benefit**
ADOT/MVD Secretary of State	Driver license applicants opting to register to vote through the Motor Vehicle Division.

3. Cost-benefit analysis

Cost-revenue scale

Annual costs or revenues are defined as follows:

Minimal	less than $1,000
Moderate	$1,000 to $9,999
Substantial	more than $10,000

a. Probable costs and benefits to ADOT and other agencies:

Costs for rulemaking and training are minimal.

b. Probable costs and benefits to political subdivisions:

There are no costs to political subdivisions of this state from this rule.

c. Probable costs and benefits to businesses:

There are no costs to businesses from this rulemaking.

d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
ADOT/MVD	Minimal. Rulemaking and Training.	None

4. Probable impact on public and private employment:

There is no impact to public and private employment.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the rulemaking:

Small businesses are not affected by this rulemaking.

b. Administrative costs and other costs required for compliance:

None

c. Description of the methods used by ADOT for reduction of impact on small businesses:

None

d. Probable costs and benefit to private persons and consumers:

Driver license applicants will benefit from convenience. A person will be able to register to vote while completing driver license transactions at the Motor Vehicle Division.

6. Probable effect on state revenues:

None

7. Less intrusive or less costly alternative methods of achieving the rulemaking:

The Division is unaware of less intrusive or costly alternative methods in achieving this rulemaking.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The agency believes it has set forth adequate data in assessing this rulemaking's economic impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION –

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

R17-4-401, R17-4-411, R17-4-412

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary

1. Identification of the proposed rulemaking:

Laws 2005, Chapter 312 amends Title 28, Chapter 4, Arizona Revised Statutes by adding Article 3.1 (A.R.S. §§ 28-1401, 1402, and 1403), regarding the creation of a special ignition interlock restricted driver license "SIIRDL." Additionally, conforming amendments were made to A.R.S. §§ 28-673, 28-1301, 28-1321, 28-1383(A)(3), 28-1441, 28-1461, 28-1463, 28-1464, 28-3159, 28-3166, 28-3319, 28-3320, and 28-3322. Effective February 1, 2006, a SIIRDL is created for qualifying individuals during a period of suspension or revocation for alcohol-related offenses. A person whose Class D or G Driver License has been suspended for refusal to submit to a blood alcohol concentration test or revoked for an extreme or aggravated DUI may apply to the Division for a SIIRDL, which allows a person to operate a motor vehicle as restricted by law and equipped with a certified ignition interlock device "CIID" during the period of suspension or revocation. Also, the new law states that the Division shall issue a SIIRDL to a person under eighteen years of age, or a person age eighteen, nineteen, or twenty, who has a court-ordered restriction pursuant to A.R.S. §§ 28-3320 or 28-3322, respectively.

The Division is proposing this rule to:

- Clarify application requirements for a person to be eligible for a SIIRDL;
- Set application fees for the SIIRDL, which are age-appropriate and consistent with a non-SIIRDL driver license application fee;
- Clarify the driving restrictions for SIIRDL holders;
- Clarify installer reporting requirements and criteria;
- Ensure financial responsibility requirements are met;
- Clarify when the Division will extend a SIIRDL; and
- Clarify hearing procedures when the Division extends a SIIRDL.

A subsection, Burden of proof and presumptions, was added at the request of the Division's Executive Hearing office.

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

The Division may experience a minimal to moderate economic impact for rulemaking, programming, training, and advertising. An applicant for a SIIRDL may experience a minimal impact for the $25 application fee associated with the SIIRDL and any screening or education that may be required. The number of SIIRDLs issued is not readily quantifiable as this is a new credential being issued by the Division. The cost for the SIIRDL to a qualified individual does not outweigh the benefit of that individual having a clearly marked credential allowing them to drive to their jobs and other locations as restricted during the period of suspension or revocation. CIID installers may experience a moderate impact for acquiring the capability to report required information electronically, to the Division, as required by this rule. The benefit of safety to the motoring public outweighs the cost to an installer as the Division will be able to identify those individuals with a SIIRDL and CIID who attempt to operate the vehicle while their blood alcohol concentration is above the presumptive limit as prescribed by law, and take appropriate action as necessary, to make the public roadways safe. Additionally, the benefit to law enforcement to easily determine when an individual is required to have a functioning CIID in the vehicle the individual is operating will increase public safety by removing violators from the public highways.

3. **Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

   Troy A. Walters, Administrative Rules Analyst
   Administrative Rules Unit
   Department of Transportation, Mail Drop 530M
   1801 W. Jefferson Street
   Phoenix, AZ 85007

B. Economic, small business and consumer impact statement

1. **Identification of the proposed rulemaking:**

   See paragraph (A)(1) above.

2. **Identification of persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:**

Persons to bear costs	**Persons to benefit**
ADOT/MVD	Law enforcement, motoring public
Ignition interlock device installers	Motoring public
SIIRDL applicants	Ignition interlock device installers, motoring public

3. **Cost-benefit analysis**

   Cost-revenue scale

   Annual costs or revenues are defined as follows:

   Minimal less than $1,000
   Moderate $1,000 to $9,999

Substantial $10,000 or more

a. Probable costs and benefits to ADOT and other agencies:

The Division experiences minimal to moderate costs for; rulemaking, system programming, training, and advertising.

b. Probable costs and benefits to political subdivisions:

There are no costs to political subdivisions of this state from these rules.

c. Probable costs and benefits to businesses:

Ignition interlock device installers may experience a moderate impact for acquiring the capability to report required information electronically to the Division as required by this rulemaking.

d. Cost-benefit summary and conclusion:

Group Affected **Description of Effect**	**Increased Cost** **Decreased Revenue**	**Decreased Cost** **Increased Revenue**
ADOT/MVD	Minimal to moderate for rulemaking, system programming, training, and advertising.	The Division will experience an increase in revenue, as this is a new credential, by collecting an age-appropriate application fee as authorized by statute.
Ignition interlock device installers	Minimal to moderate for acquiring the capability to transmit information collected electronically to the Division.	Minimal to moderate increase in revenue by installing additional ignition interlock devices.
Applicants for a SIIRDL	Minimal to moderate for the application fee and any screening/education program that may be required.	None
Alcohol & drug screening or education programs	None	Minimal to moderate increase in revenue due to an increase in referrals to screening or education programs.

4. Probable impact on public and private employment:

There is no impact on public and private employment.

5. Probable impact on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Ignition interlock device installers.

b. Administrative costs and other costs required for compliance:

There are minimal to moderate costs when an ignition interlock device installer does not have the electronic capability to transmit information to the Division as the installer will have to purchase the capability to include computers, software, setup, and training.

c. Description of the methods used by ADOT for reduction of impact on small businesses:

None

d. Probable costs and benefit to private persons and consumers:

An applicant for a SIIRDL may experience a minimal impact for the application fee associated with the SIIRDL and any screening or education that may be required. The age-appropriate application fees are the current fees use for an individual to apply for a regular driver license. Additionally, when the individual's SIIRDL requirement is fulfilled, the individual may experience a minimal impact from re-application fees and any reinstatement fees due to receive a new credential without the SIIRDL requirement.

6. Probable effect on state revenues:

State revenue may increase as a result of the cost of the new license to an individual depending on how many people qualify. Included in this increase of revenue is the re-application fee an individual will be required to pay for a new credential once the SIIRDL requirement is fulfilled.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking:

The Division is unaware of less intrusive or costly alternative methods in achieving this rulemaking.

C. Explanation of the limitations of the data available for subsection (B) of this economic small business and consumer impact statement.

The agency believes it has accurately assessed the rulemaking's economic impact.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

R17-4-413

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation, Motor Vehicle Division (Division), promulgates this rule under A.R.S. § 28-3312(J) to establish eligibility guidelines for persons interested in obtaining a commercial driver license (CDL) after having incurred a lifetime CDL disqualification.

The Division's Commercial Driver License, Driver Improvement and Medical Review programs oversee CDL disqualification reinstatements.

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

This rule will bring the State of Arizona's regulations in line with 49 CFR 383.51(A)(5), which allows a state to reinstate the commercial privileges of a driver disqualified for life after 10 years if that person is otherwise eligible to apply for a commercial driver license.

There will be moderate costs to the Division for establishing a review process and training.

Failure to promulgate this rule may result in a substantial loss to the state in federal funding, grant monies, and the Division's ability to issue a CDL that is valid for operating a commercial motor vehicle (CMV) outside of Arizona.

Costs to the CDL applicant are those typically associated with obtaining a commercial driver license, which are minimal. Regulated persons will benefit by being able to return to a career as a commercial motor vehicle operator.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Celeste M. Cook, Administrative Rules Analyst

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

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B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Group Affected Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
Arizona Department of Transportation	Moderate to substantial	Minimal
Arizona Political Subdivisions	Minimal	Moderate to substantial
Arizona Trucking Industry	None	Moderate to substantial
Private Individual	Minimal	Moderate to substantial

3. Cost-benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $1,000

Moderate $1,000 to $9,999

Substantial $10,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rule:

The Division incurs substantial costs to review CDL applications, to maintain and review licensees' driving records, conduct all required commercial licensing written and skills tests, and to carry out the commercial driver medical screening process. There will be moderate costs for establishing a review process and for providing the necessary training. However, since the Division's statistics show that approximately 114 commercial driver licensees are currently disqualified for a lifetime the cost per case, to ensure adequate compliance with federal commercial licensing standards, is minimal.

Failure to promulgate this rule will result in the state losing substantial federal funding, grant monies, and the ability to issue commercial driver licenses outside of Arizona. The loss in federal dollars (a decrease of five % the first year and ten % each additional year until the required mandate is met) and the effect on the Arizona trucking interstate industry by the inability to issue a CDL that is valid outside of Arizona is not readily quantifiable, but is anticipated to be substantial.

b. Probable costs and benefits to political subdivisions of this state directly affected by the implementation and enforcement of the proposed rule:

Political subdivisions may incur:

Costs to hire,

Costs to insure,

Benefits from an increase in eligible CMV operators, and

Benefits from an increase in revenue taxes.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

Businesses may incur:

Costs to hire,

Costs to insure,

Benefits from an increase in eligible CMV operators,

Benefits from an increase in revenue, and

Increases in revenue due to the ability to increase deliveries due to more drivers being available.

4. General Description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking:

Annually, the Division incurs substantial costs to review CDL applications, to maintain and review licensees' driving records, conduct all required commercial licensing written and skills tests, and to carry out the commercial driver medical screening process. There will be moderate costs for establishing a review process and for providing the necessary training. However, since Division records indicate that approximately 114 Arizona commercial driver licensees are currently disqualified for a lifetime, the cost per case to ensure adequate compliance with federal commercial licensing standards is minimal.

There are no anticipated costs to small businesses. However, the trucking industry, businesses, and members of the public may benefit by the increased number of qualified CMV operators.

The Division collects a $10 disqualification reinstatement fee, a $12.50 to $25 CDL application fee (depending on the class of license), $10 for each requested endorsement, and $12.50 to $25 for each applicable commercial motor vehicle skill test. These costs are intended to allow the Division to recover expenses incurred while processing the commercial license.

A CDL applicant incurs minimal costs in reinstating the commercial driving privilege, applying for a CDL and obtaining a medical examination. Regulated persons will benefit by being able to return to a career as a CMV operator. CDL reinstatement is based upon the person meeting the eligibility requirements, submitting all required documentation, successfully completing all required written and skill tests, and, when applicable, successfully passing a federal security threat assessment.

Allowing persons, who before this rulemaking were not eligible to apply for a CDL, to reinstate from a lifetime disqualification will benefit both public and private employment by increasing the number of qualified CMV operators.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Motor carriers.

b. Administrative and other costs required for compliance with the proposed rulemaking:

The Division incurs substantial costs to review CDL applications, to maintain and review licensees' driving records, conduct all required commercial licensing written and skills tests, and to carry out the commercial driver medical screening process. There will be moderate costs for establishing a review process and for providing the necessary training. However, since the Division's statistics show that approximately 114 commercial driver licensees are currently disqualified for a lifetime the cost per case, to ensure adequate compliance with federal commercial licensing standards, is minimal

c. Description of the methods ADOT may use to reduce the impact on small businesses:

There are no anticipated costs to small businesses. However, small businesses may benefit from the increased the number of qualified CMV operators.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

A CDL applicant incurs minimal costs in reinstating the commercial driving privilege, applying for a CDL and obtaining a medical examination. There are no additional costs associated for an applicant applying for reinstatement after a lifetime disqualification. Regulated persons will benefit by being able to return to a career as a commercial motor vehicle operator. CDL reinstatement is based upon the person meeting the eligibility requirements, submitting all required documentation, successfully completing all required written and skill tests, and, when applicable, successfully passing a federal security threat assessment.

6. Statement of probable effect on state revenues:

The State will benefit from this rulemaking due to increased revenue in the form of income and transportation taxes, continued eligibility for federal funding, grant monies, and the ability to issue a CDL that is valid outside of Arizona.

7. Description of any less intrusive or less costly alternative methods of achieving the proposed rulemaking:

The process chosen by the Division is the least costly as it only differs from the new applicant process by reviewing the driver record to determine whether the convictions listed in the rule, causing ineligibility, are present. This verification process must be used to ensure public safety.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in quantitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic small business and consumer impact statement.

The agency believes it has adequate data for sufficient assessment this rulemaking's economic impact.

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 4. DRIVER LICENSES

R17-4-414

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Division engages in this rulemaking to promulgate rules prescribing the procedures, reporting, and records maintenance requirements necessary to fulfill the requirements of the Motor Carrier Safety Improvement Act (MCSIA) of 1999 as it pertains to driver history checks and actions.

MCSIA requires each state to obtain the ten-year driver history for all individuals applying for a commercial driver license (CDL) and maintain that history as part of its driver information regardless of whether the violation occurred in a commercial motor vehicle (CMV).

In order to ensure compliance with MCSIA requirements, each state issuing a CDL must request all information about the individual's driving record from any other state that has issued a prior license to the individual. Additionally, the state must accept the out-of-state driving record on CDL transfer applications and include this record as a permanent part of the new state's driving record. States must include information on all violations of motor vehicle traffic control laws committed by the CDL holder on the driver's record regardless of whether the violation occurred in a CMV.

Accurate tracking of commercial driver behavior is particularly important for highway safety. Each year, more than 7 million large trucks and other CMVs travel more than 300 billion miles on America's highways.

In 1999, large trucks were involved in 475,000 crashes, including nearly 5,000 fatal crashes and 101,000 injury crashes. Almost 80% of those who died in large truck crashes were occupants of other vehicles, and 8% were pedestrians or bicyclists. In large truck crashes involving two or more vehicles, 98% of the people killed were occupants of passenger vehicles. More than one-fifth of all passenger vehicle occupant deaths in multiple-vehicle crashes occurred in crashes with large trucks.

As with other drivers, commercial drivers who have a history of prior accidents and convictions are more likely to crash. CMVs, however, are a much greater threat than passenger vehicles when they crash due to the fact that CMVs often weigh 20 to 30 times more than the typical passenger vehicle and, in some instances can weigh as much as 250,000 pounds. Large vehicles do not maneuver easily; it may take a tractor-trailer 20% to 40% longer to stop than a passenger car.

To reduce the number of unsafe drivers on the road, driver control systems regulate, and are intended to detect and deter, unsafe driving behavior. Driver history records are the backbone of this driver control system.

States track poor driving behavior by recording crash information and traffic violations in a driver's history record. Receiving evidence of poor driving behavior will allow the Division to remove unsafe drivers from the road through license cancellations, disqualifications, suspensions, and revocations. Accurate driver history records are crucial to removing bad drivers from the road. In severe cases, driver records can provide the evidence necessary to sentence a problem driver to jail. A CMV operator may attempt to mask a poor driving record by moving to different jurisdictions, enrolling in multiple classes, or exploiting hardship programs. CMV operators who successfully mask their driving record endanger the public by retaining their driver's license and remaining on the road.

The Division issues approximately 26,500 five-year CDLs each year. Thus, this rule has the potential of affecting approximately 26,500 CMV operators. However, since the Division will only take action for a conviction, disqualification, or other licensing action that occurred after the effective date of this rule and not all persons issued a CDL are unsafe drivers, it is difficult to quantify the exact number of CMV operator who will be affected by this rulemaking.

This rule will bring the State of Arizona's regulations into full compliance with 49 CFR §§ 384.206, 384.210, 384.225, 384.231, and 384-232, which require each state to request a CDL applicant's driver history and take action when adverse conviction information is received as a result of the driver history request.

If a state does not comply with MCSIA requirements, the Secretary of Transportation must withhold Motor Carrier Safety Assistance Program (MCSAP) funding increases and prohibit the state from processing and issuing CDLs that are valid for interstate travel until compliance is achieved.

Employers of commercial drivers will also benefit from the changes made by this rulemaking. Employers of CMV operators are required to check driver records every year. Because all moving violations must be recorded on the driver record and because a commercial driver must now disclose all states in which they were licensed in the last ten years, a complete history of the driver's record will be available to employers and prospective employers.

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

This rule will bring the State of Arizona's regulations in line with 49 CFR 383.51(A)(5), which allows a state to reinstate the commercial privileges of a driver disqualified for life after 10 years if that person is otherwise eligible to apply for a commercial driver license. Costs to the CDL applicant are those typically associated with obtaining a commercial driver license, which are minimal. Regulated persons will benefit by being able to return to a career as a commercial motor vehicle operator.

There will be moderate costs to the Division for establishing a review process and to provide the necessary training.

Failure to promulgate this rule may result in a substantial loss to the state in federal funding, grant monies, and the Division's ability to issue a CDL that is valid for operating a commercial motor vehicle (CMV) outside of Arizona.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:

Name: Celeste M. Cook, Administrative Rules Analyst

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

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Fax: (602) 712-3081

E-mail: ccook@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

2. Identification of persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking:

Arizona Department of Transportation
Arizona Political Subdivisions
Arizona Trucking Industry
Private Individual

3. Cost-benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than $1,000
Moderate	$1,000 to $49,999
Substantial	$50,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

Annually, the Division incurs substantial costs to review CDL applications, to maintain and review licensees' driving records, and to carry out the commercial driver screening process. There will be moderate costs for establishing a review process and for providing the necessary training. However, the cost per case to ensure adequate compliance with federal commercial licensing standards is minimal.

Failure to promulgate this rule will result in the state losing substantial federal funding, grant monies (a decrease of 5 % the first year and 10 % each additional year until the required mandate is met), and the ability to issue commercial driver licenses outside of Arizona. The loss in federal dollars and the effect on the Arizona trucking industry resulting from the Division's inability to issue a CDL that is valid outside of Arizona, is not readily quantifiable, but is anticipated to be substantial.

b. Probable costs and benefits to political subdivisions of this state directly affected by the implementation and enforcement of the proposed rule(s):

Political subdivisions may incur:

Costs to hire,

Benefits from accurate driver history records allowing the employer to make a more informed decision which could help to reduce the cost of the Motor Carriers liability insurance premiums.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:

Businesses may incur:

Costs to hire,

Benefits from accurate driver history records allowing the employer to make a more informed decision.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking:

There are no anticipated costs to small businesses. Although the trucking industry and transportation businesses may experience a slight decrease in the number of qualified CMV operators, members of the public will benefit by a reduction in the number of unsafe drivers.

The Division collects a $10 disqualification reinstatement fee, a $12.50 to $25 CDL application fee (depending on the class of license), $10 for each requested endorsement, and $12.50 to $25 for each applicable commercial motor vehicle skill test. These costs are intended to allow the Division to recover expenses incurred while processing the commercial license.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

a. Identification of small businesses subject to the proposed rulemaking:

Motor carriers

b. Administrative and other costs required for compliance with the proposed rulemaking:

There are no anticipated administrative costs to small businesses.

c. Description of the methods the Arizona Department of Transportation may use to reduce the impact on small businesses:

There are no anticipated costs to small businesses. However, small businesses may benefit by being able to select CMV operators having a history of safer driving habits.

d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking:

A CDL applicant incurs minimal costs in reinstating the commercial driving privilege, applying for a CDL, and obtaining a medical examination. The CDL applicant may be required to pay a $10 disqualification or reinstatement fee, a $12.50 to $25 CDL application fee (depending on the class of license), $10 fee for each requested endorsement, and $12.50 to $25 fee for each applicable commercial motor vehicle skill test. CDL reinstatement is based upon the person meeting the eligibility requirements, submitting all required documentation, successfully completing all required written and skill tests, and, when applicable, successfully passing a federal security threat assessment.

6. Statement of probable effect on state revenues:

The State will benefit from this rulemaking due to increased revenue in the form of income and transportation taxes, continued eligibility for federal funding, grant monies, and the ability to issue a CDL that is valid outside of Arizona. Because this is a new process, the actual impact this rule will have on state revenue is not readily quantifiable as there is no available data regarding the number of CMV operators and motor carriers that will be affected by this rulemaking, but is anticipated to be substantial.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

The rulemaking requires the Division to take action when receiving conviction information that occurred on or after the effective date of the rule. By only considering convictions occurring on or after the effective date of the rule, the Division has chosen the less intrusive and less costly method that fulfills the requirements of 49 CFR §§ 384.206, 384.210, 384.225, 384.231, and 384-232.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic small business and consumer impact statement.

The Division believes it has adequate data for sufficient assessment of this rulemaking's economic impact.

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 4, Article 4

Section D

Rule Text

1. The total amount of Vehicle License Tax paid during the previous year. Supporting Vehicle License Tax records for each rental vehicle shall include:
   a. The Vehicle Identification Number,
   b. The Arizona vehicle license plate number,
   c. A copy of the Arizona registration,
   d. The amount paid for Vehicle License Tax minus any Vehicle License Tax credited under A.R.S. § 28-2356,
   e. The date on which the Vehicle License Tax was paid, and
   f. The dates the rental vehicle was in and out of service.
2. The total gross amount of Arizona vehicle rental revenues collected for the previous year. Supporting Arizona vehicle rental revenue records shall include:
   a. The rental contract for each rental vehicle,
   b. The amount of surcharge collected,
   c. Chart of accounts,
   d. General ledger,
   e. Financial statements,
   f. Federal tax returns, and
   g. Monthly trial balance.
3. The amount of the surcharge collected during the previous year. Supporting surcharge collection records shall include:
   a. All applicable rental contracts; and
   b. The total amount stated in each rental contract, supported by relevant documentation.
4. Failure to keep and maintain proper records or failure to provide records for audit purposes may result in the Department making an assessment against the rental business for the total surcharge amount estimated to have been collected, as determined from the best information available to the Director.

D. Audits. The Department shall conduct each audit of a person who collects the surcharge in accordance with generally accepted government auditing standards as set forth in *Government Auditing Standards: 2011 Revision* (commonly referred to as the Yellow Book,) issued by the U.S. Government Accountability Office. The Department incorporates by reference *Government Auditing Standards: 2011 Revision* and no later amendments or editions. The incorporated material is on file with the Department. The printed version is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material is available free of charge at http://www.gao.gov/yellowbook or can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

1. The rental business shall have records made available for audit during normal business hours at the rental business location in Arizona. The Department may conduct audits at an out-of-state location, which are paid for by the rental business. The rental business shall pay the audit expenses, per diem, and travel in accordance with the Arizona Department of Transportation expense guidelines in effect at the time of the audit.
2. The Director has appropriate subpoena powers to require records to be produced for examination and to take testimony. In accordance with A.R.S. § 28-5922, if a person fails to respond to the Director's or agent of the Director's request for records, the Director shall issue subpoenas for the production of records or allow seizure of records.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 2058, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 888, effective, June 1, 2013 (Supp. 13-2).

R17-4-351. Special License Plate; Definition

For the purposes of R17-4-352, "special license plate" or "special plate" has the meaning prescribed in A.R.S. § 28-2401.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

R17-4-352. Duplicate Special License Plate; Fee

A. The Department shall charge and collect from a motor vehicle owner a one-time fee of $10 for each duplicate special license plate requested.

B. The Department shall charge and collect the current applicable U.S. Postal Service postage rate as provided in A.R.S. § 28-2151 and A.A.C. R17-1-204 to mail a duplicate special license plate to a motor vehicle owner.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 1890, effective October 1, 2019 (Supp. 19-3).

ARTICLE 4. DRIVER LICENSES

R17-4-401. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-1301, and 28-3001, the following definitions apply to this Article unless otherwise specified:

"Division" means the Arizona Department of Transportation, Motor Vehicle Division.

"Financial responsibility (accident) suspension" means a suspension, by the Department, of:

The Arizona driver license or driving privilege of an owner of a vehicle that:

Lacks the coverage required under A.R.S. § 28-4135, and

Is involved in an accident in Arizona; and

The Arizona registration of a vehicle, unless the Department receives proof the vehicle was sold.

"Gore area" is defined under A.R.S. § 28-644.

"Proof the vehicle was sold" means a written statement to the Department from an owner that includes the following:

The seller's name;

The VIN;

The sale date; and

The purchaser's name and address.

"Restricted permit" means written permission from the Department for:

A person subject to a financial responsibility (accident) suspension to operate a motor vehicle only:

Between the person's home and workplace,

During the person's work-related activities, or

Between the person's home and school; and

A vehicle with an Arizona registration subject to a financial responsibility (accident) suspension to be operated by a person specified under R17-4-402 only:

Between the person's home and workplace;

During the person's work-related activities; or

Between the person's home and school.

"State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"SR22" means a certificate of insurance that complies with requirements under A.R.S. § 28-4077(A).

"Thirty-six-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month three years before the date of the violation.

"Twelve-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month one year before the date of the violation.

"Twenty-four-month period" means the time measured from the date of the most recent violation with assigned points for which a driver has a conviction or judgment to that day and month two years before the date of the violation.

"VIN" or "vehicle identification number" is defined under A.R.S. § 13-4701(4).

"Withdrawal action" means a Department action that invalidates a person's Arizona driving privilege or a vehicle's Arizona registration, which includes:

A cancellation;

A suspension;

A revocation;

Any outstanding warrant; or

Any unresolved citation.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

R17-4-402. Restricted Permit During a Financial Responsibility (Accident) Suspension

A. An applicant for a restricted permit shall:
1. Have no withdrawal action other than the financial responsibility (accident) suspension;
2. Provide an SR22 Certificate of Insurance as proof of future financial responsibility that must be kept in force for three consecutive years after the effective date of the financial responsibility (accident) suspension;
3. Pay the $10 driving privilege reinstatement fee under A.R.S. § 28-4144(C)(2)(b); and
4. Pay the $25 motor vehicle registration and license plate reinstatement fee under A.R.S. § 28-4144(C)(2)(b), or if the vehicle was sold before the date of the accident, provide proof the vehicle was sold as defined under R17-4-401;
5. Pay the driving privilege reinstatement application fee under A.R.S. § 28-3002(A)(2); and
6. Satisfy any applicable requirements of A.R.S. § 28-4033(A)(2)(c) or 28-4144(C).

B. In addition to subsection (A) during a financial responsibility (accident) suspension, a restricted permit applicant may:
1. Apply for an original or renew an Arizona driver license by:
   a. Complying with A.R.S. §§ 28-3153, 28-3158, or 28-3171; and
   b. Paying the application fee under A.R.S. § 28-3002(A)(2) determined by the applicant's age on the application date; or
2. Obtain a duplicate Arizona driver license by paying the $12 duplicate driver license application fee under A.R.S. § 28-3002(A)(7).

C. At the end of the financial responsibility (accident) suspension, the Division shall immediately remove the driving privilege restriction from the Arizona driving record when the person surrenders an expired restricted permit to the Division.

Historical Note

New Section recodified from R17-4-227 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5220, effective February 3, 2003 (Supp. 02-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-403. Application for Duplicate Driver License or Duplicate Nonoperating Identification License; Fees

A. An applicant shall apply to the Division, on a form provided by the Division, for a duplicate driver license or a duplicate nonoperating identification license.

B. The fee for the duplicate driver license or duplicate nonoperating identification license issued by the Division is $12 under A.R.S. §§ 28-3002(A) and 28-3165.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4).

R17-4-404. Driver Point Assessment; Traffic Survival Schools

A. Point assessment. The Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.

B. Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in a twelve-month period, the Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
2. Suspend the driver's Arizona driver license or driving privilege.

C. Traffic survival school order of assignment. The Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in a twelve-month period, and who did not complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
   a. Instruct the driver to submit any hearing request to the Department within 15 days after the date of the order of assignment; and

b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the Department issuing a six-month order of suspension.

2. The Department shall record that a driver completed traffic survival school if:
   a. A licensed traffic survival school reports that the driver successfully completed the curriculum; or
   b. The driver presents to the Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.

D. Suspension for failure to complete traffic survival school. The Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
1. Specify the period within which the driver may submit a hearing request to the Department, and
2. Specify the effective date of the suspension.

E. Suspension for accumulation of excessive points. The Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
1. Specify the length of the suspension as follows:
   a. A three-month suspension for accumulation of 8 to 12 points in a twelve-month period if a traffic survival school course was successfully completed in the previous twenty-four-month period;
   b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
   c. A six-month suspension for accumulation of 18 to 23 points in a twelve-month period; and
   d. A twelve-month suspension for accumulation of 24 or more points in a thirty-six-month period;
2. Specify the period within which the driver may submit a hearing request to the Department; and
3. Specify the effective date of the suspension.

Historical Note

New Section recodified from R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1) Amended by final rulemaking at 19 A.A.R. 3897, effective January 4, 2014 (Supp. 13-4). Amended by exempt rulemaking at 21 A.A.R. 1092, effective September 1, 2015 (Supp. 15-2).

Table 1. Driver Point Valuation

Violation	Points
A.R.S. § 28-1381, driving or actual physical control of a vehicle while under the influence.	8
A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.	8
A.R.S. § 28-1383, aggravated driving or actual physical control while under the influence.	8
A.R.S. § 28-693, reckless driving.	8
A.R.S. § 28-708, racing on highways.	8
A.R.S. § 28-695, aggressive driving.	8
A.R.S. §§ 28-662, 28-663, 28-664, or 28-665, relating to a driver's duties after an accident.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing death to another person.	6
A.R.S. § 28-672(A), failure to comply with a red traffic-control signal, failure to yield the right of way when turning left at an intersection, failure to yield the right of way to a pedestrian, failure to exercise due care, failure to stop for a school bus stop signal, or failure to comply with a stop sign, and the failure results in an accident causing serious physical injury to another person.	4
A.R.S. § 28-701, reasonable and prudent speed.	3
A.R.S. § 28-644(A)(2), driving over, across, or parking in any part of a gore area.	3
Any other traffic regulation that governs a vehicle moving under its own power.	2

Historical Note

New Table 1 made by final rulemaking at 14 A.A.R. 839, effective March 4, 2008 (Supp. 08-1).

R17-4-405. Emergency Expired

Historical Note

Emergency rule adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired.

R17-4-406. Minor's Application for Permit or License

A. For the purposes of administering the provisions of A.R.S. § 28-3160, the following definitions apply to this Section:
1. "Application," means a form provided by the Division that includes the Legal Guardian Affidavit required by the Division to be submitted with each minor's driver license application.
2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
3. "Parent" means the natural or adoptive father or mother of a child.

B. Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.

C. Procedure when only one parent signs:
1. If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
2. If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.
3. If the signing parent is not married to the child's other parent, the signing parent shall affirm, by sworn statement to the Division or a notary public, that the other parent does not have custody of the child, in which event the Division shall presume the signing parent has custody of the child.

D. Procedure when both parents are deceased:
1. If both parents are deceased, the minor or minor's guardian shall attach certified copies of certificates of death or other satisfactory proof of death, that includes a court

judgment, affidavits of close relatives of the child, or school records.
2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
3. An employer signing the application shall certify the person employs the minor on the date of application.
4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.

E. Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-201 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (C)(4) should read "... governed by R17-4-58" as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-201 renumbered without change as Section R17-4-406 Supp. (87-2). Former Section R17-4-406 repealed, new Section R17-4-406 adopted effective July 14, 1989 (Supp. 89-3). Section recodified to R17-4-450 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4).

R17-4-407. Travel-compliant Driver License or Travel-compliant Non-operating Identification License Application; Fee

A. A person seeking a travel-compliant driver license or travel-compliant identification license shall meet and comply with all:
1. State laws and rules applicable to every applicant who seeks issuance of any other driver license class, type, endorsement or non-operating identification license issued by the Department; and
2. Federal laws and regulations regarding the application and minimum documentation, verification, and card issuance requirements prescribed in the most recent edition of 6 CFR 37.11 for establishing satisfactory proof of a person's identity, date of birth, social security number, principal residence address of domicile in this state, and lawful status in the United States.

B. A person seeking a travel-compliant driver license or travel-compliant identification license shall:
1. Apply to the Department using an application form provided by the Department; and
2. Submit to the Department for authentication, satisfactory proof of the applicant's full legal name, date of birth, sex, social security number, principal residence address of domicile in this state, and that the applicant's presence in the United States is authorized under federal law. A list of all source documents the Department may accept as satisfactory proof under state and federal law is maintained by the Department on its website at www.azdot.gov.

C. An applicant for a travel-compliant driver license or travel-compliant identification license shall submit to the Department a fee of $25:
1. On original application, reinstatement, or renewal of any travel-compliant driver license class; or
2. On original application or renewal of a travel-compliant identification license.

D. A travel-compliant driver license or travel-compliant identification license issued by the Department, as prescribed under A.R.S. § 28-3175 and this Section, is:
1. Valid for a period of up to eight years;
2. Renewable for successive periods of up to eight years; and
3. Subject to all state and federal laws or restrictions requiring the issuance of a shorter expiration period (e.g., up to age 65, as provided under A.R.S. § 28-3171, or for a time period equal to the applicant's authorized stay in the United States, as provided under 6 CFR 37.21, etc.).

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-202 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, subsection (D) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-202 renumbered without change as Section R17-4-407 (Supp. 87-2). Section recodified to R17-4-451 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-706 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 1158, effective May 12, 2003 (Supp. 03-1). New Section made by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Section repealed; new Section made by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

R17-4-408. Mandatory Extension of a Certified Ignition Interlock Device Order

A. For purposes of this Section, "conviction" has the meaning prescribed in A.R.S. § 28-101(12).

B. For the duration of a certified ignition interlock device order, each conviction for violating A.R.S. §§ 28-1464(A), 28-1464(C), 28-1464(D), 28-1464(F), or 28-1464(H) of the person subject to the order will result in the Division's extension of the order.

C. Each extension by the Division of a person's certified ignition interlock device order shall be for one year.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-203 and Appendix D adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, added (C)(5) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-203 renumbered without change as Section R17-4-408 (Supp. 87-2). Section recodified to R17-4-452 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-709.10 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-409. Non-operating Identification License Application; Applicability; Fee

A. A person seeking a non-operating identification license, issued by the Department as prescribed under A.R.S. § 28-3165 and

this Section, shall apply to the Department using a form provided by the Department.

B. An applicant shall submit a $12 fee to the Department, on application for a non-operating identification license, unless the applicant is provided a specific statutory exemption from payment of the fee.

C. An applicant shall provide to the Department, on application for a non-operating identification license, satisfactory proof of the applicant's full legal name, date of birth, sex, principal residence address of domicile in this state, and evidence that the applicant's presence in the United States is authorized under federal law as listed by the Department on its website at www.azdot.gov.

D. A person seeking a travel-compliant identification license issued by the Department under A.R.S. § 28-3175, which is recognized by federal agencies as proof of identity for use when accessing federal facilities, boarding federally-regulated commercial aircraft, or entering nuclear power plants, shall apply to the Department as provided under R17-4-407.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-204 and Appendix B adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-204 renumbered without change as Section R17-4-409 (Supp. 87-2). Section recodified to R17-4-453 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-508 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 4446, effective November 7, 2006 (Supp. 06-4). Amended by final rulemaking at 16 A.A.R. 2448, effective February 5, 2011 (Supp. 10-4). Amended by final exempt rulemaking under Laws 2015, Ch. 294, § 5 at 22 A.A.R. 819, effective March 28, 2016 (Supp. 16-1). Amended by final rulemaking at 25 A.A.R. 1885, with an immediate effective date of July 2, 2019 (Supp. 19-3).

R17-4-410. Voter Registration Through the Motor Vehicle Division

A. For purposes of this Section:
1. "License" has the same meaning as "driver's license" under A.R.S. § 16-111(2).
2. "MVD" means the Arizona Department of Transportation, Motor Vehicle Division.

B. To register to vote in Arizona through the MVD as provided for in A.R.S. § 16-112, a person who completes a transaction listed in subsection (C) shall complete and return to MVD:
1. A Secretary of State-approved hardcopy voter registration form for the county of the person's residence, or
2. An electronic voter registration form through MVD's ServiceArizona web site or through MVD's driver license system along with an electronic verification that the person meets voter eligibility criteria under A.R.S. § 16-101.

C. Subsection (B) applies to the following license transactions:
1. Initial licensee application;
2. License renewal;
3. Duplicate driver license; or
4. Licensee personal information update.

D. MVD shall transfer the voter registration forms and the data collected under this Section by:
1. Mailing the completed hardcopy forms to the appropriate county recorder; and
2. Transmitting the data from completed electronic voter registration forms and licensee personal information updates to the Secretary of State as prescribed under A.A.C. R2-12-605 for further distribution to the appropriate county recorder.

E. MVD shall maintain the confidentiality of applicant information as required under A.R.S. Title 16, Chapter 1.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-205 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-205 renumbered without change as Section R17-4-410 (Supp. 87-2). Section recodified to R17-4-454 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 2394, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 12 A.A.R. 1329, effective June 4, 2006 (Supp. 06-2).

R17-4-411. Special Ignition Interlock Restricted Driver License: Application, Restrictions, Reporting, Fee

A. In addition to the requirements prescribed in A.R.S. § 28-3158, an person applying for a special ignition interlock restricted driver license shall:
1. If the person is suspended for a first offense of A.R.S. § 28-1321:
   a. Complete at least 90 consecutive days of the period of the suspension, and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the suspension.
2. If the person is revoked for a first offense of A.R.S. § 28-1383(A)(3):
   a. Complete at least 90 consecutive days of the suspension under A.R.S. § 28-1385,
   b. Submit proof to the Division that the person has completed an approved alcohol or drug screening or treatment program, and
   c. Maintain a functioning certified ignition interlock device during the remaining period of the revocation.
3. If the person has a court-ordered restriction under A.R.S. §§ 28-3320 or 28-3322:
   a. Comply with the restrictions in subsection (C), and
   b. Maintain a functioning certified ignition interlock device during the remaining period of the court-ordered restriction.

B. The Division shall not issue a special ignition interlock restricted driver license if the person's driver license or driving privilege is suspended or revoked for a reason not under subsections (A)(1), (2), or (3).

C. A person applying for a special ignition interlock restricted driver license shall pay the following fees:

1.	Age 50 or older	$10.00
2.	Age 45 – 49	$15.00
3.	Age 40 – 44	$20.00
4.	Age 39 or younger	$25.00

D. A special ignition interlock restricted driver license issued under subsection (A), permits a person to operate a motor

vehicle equipped with a functioning certified ignition interlock device as prescribed in A.R.S. § 28-1402(A).

E. Reporting. On the eleventh month after the initial date of installation and each eleventh month thereafter for as long as the person is required to maintain a functioning certified ignition interlock device, each installer shall electronically provide the Division all of the following information as recorded by the certified ignition interlock device:
1. Date installed;
2. Person's full name;
3. Person's date of birth;
4. Person's customer or driver license number;
5. Installer and manufacturer name;
6. Installer fax number;
7. Date report interpreted;
8. Report period;
9. Any tampering of the device within the meaning of A.R.S. § 28-1301(9);
10. Any failure of the person to provide proof of compliance or inspection as prescribed in A.R.S. § 28-1461;
11. Any attempts to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3), or if the person is younger than 21 years of age, attempts to operate the vehicle with any spirituous liquor in the person's body; and
12. Any other information required by the Director.

F. A person applying for a special ignition interlock restricted driver license shall provide proof of financial responsibility prescribed in Title 28, Arizona Revised Statutes, Chapter 9, Article 3.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-206 and Appendices C and E adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-206 renumbered without change as Section R17-4-411 (Supp. 87-2). Section recodified to R17-4-455 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-412. Extension of a Special Ignition Interlock Restricted Driver License: Hearing, Burden of Proof and Presumptions

A. Extension. The Division shall extend a person's special ignition interlock restricted driver license for a period of one year if the Division has reasonable grounds to believe:
1. The person tampered with the certified ignition interlock device within the meaning of A.R.S. § 28-1301(9),
2. The person fails to provide proof of compliance prescribed in A.R.S. § 28-1461, or
3. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit prescribed in A.R.S. § 28-1381(G)(3) three or more times during the period of license restriction or limitation, or if the person is younger than 21 years of age, attempted to operate the vehicle with any spirituous liquor in the person's body three or more times during the period of license restriction or limitation.

B. Hearing. If a person's special ignition interlock restricted driver license is extended under subsection (A), the person may submit, within 15 days of the date of the order of extension of the restriction, a written request to the Division requesting a hearing. A request for hearing stays the extension of the restriction.

C. Burden of proof and presumptions.
1. The hearing office shall presume that the person's whose special ignition interlock restricted driver license is extended under subsection (A)(3), was the person in control of the vehicle and the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).
2. The person may be rebut the presumption by a showing of clear and convincing evidence that the person whose special ignition interlock restricted driver license being extended, was not the person in control of the vehicle or attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit in A.R.S. § 28-1381, or tampered with the device within the meaning of A.R.S. § 28-1301(9).

D. Except for subsection (A)(2), if the Division suspends, revokes, cancels, or otherwise rescinds a person's special ignition interlock restricted driver license for any reason, the Division shall not issue a new license or reinstate the special ignition interlock restricted driver license during the original period of suspension or revocation or while the person is otherwise ineligible to receive a license.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-207 adopted as an emergency effective August 18, 1983, now adopted as a permanent rule effective November 30, 1983 (Supp. 83-6). Correction, (A)(3) as certified effective November 30, 1983 (Supp. 84-3). Former Section R17-4-207 renumbered without change as Section R17-4-412. Correction: subsection (F), paragraph (6), "overweight" corrected to read: "overheight" (Supp. 87-2). Section recodified to R17-4-456 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 12 A.A.R. 871, effective March 7, 2006 (Supp. 06-1).

R17-4-413. Lifetime Disqualification Reinstatement

A. Definitions. In addition to the definitions prescribed under A.R.S. §§ 28-101 and 28-3001, the following definitions apply to this Section, unless otherwise specified:
"CDL" means Commercial Driver License.
"Lifetime disqualification" means the individual is disqualified for life from operating a commercial motor vehicle as prescribed under 49 CFR 391.15.
"Permanently disqualified" means the individual will never be able to obtain a commercial driver license.

B. Eligibility. An individual with a lifetime disqualification may request reinstatement of the individual's commercial driving privilege if:
1. Ten years have passed since the date of the lifetime disqualification.
2. The individual:
   a. Is otherwise eligible for licensure.
   b. Has continuously been eligible for a driver license during the most recent 10-year period.
   c. Has not previously reinstated CDL privileges for another lifetime disqualification.

d. Has no record of a conviction for any of the following violations, in any state, within the previous 10-year period:
   i. Driving while under the influence of alcohol or a controlled substance.
   ii. Having a blood alcohol concentration of .04 or greater while driving a commercial motor vehicle.
   iii. Refusal to submit to a blood alcohol concentration test.
   iv. Leaving the scene of an accident.
   v. Using a vehicle in the commission of a felony.
   vi. Operating a commercial motor vehicle as defined under A.R.S. § 28-3001 while his or her commercial driving privileges are canceled, disqualified, suspended, or revoked.
   vii. Causing a fatality through the negligent operation of a commercial motor vehicle.

C. Application after lifetime disqualification. If the Division determines that the individual is eligible to reinstate his or her commercial driving privilege, the individual may obtain a new CDL by paying all required fees, submitting the medical examination form prescribed under Section R17-4-508(A)(1), and successfully completing all CDL written, vision, and demonstration-skill testing applicable to the type of CDL, including any endorsements, for which the individual is applying.

D. Permanent disqualification.
1. An individual who reinstated his or her commercial driving privilege in accordance with this Section and who is subsequently given a lifetime disqualification under A.R.S. § 28-3312 is permanently disqualified.
2. An individual convicted of using any vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance is permanently disqualified.
3. An individual who more than once refuses a test in violation of A.R.S. § 28-1321 if the refusals involve more than one incident is permanently disqualified.
4. An individual who more than once is convicted of violating A.R.S. § 28, Chapter 4, Article 3 is permanently disqualified.

Historical Note

Adopted as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R17-4-208 adopted as an emergency effective August 18, 1983, now adopted without change as a permanent rule effective November 30, 1983 (Supp. 83-6). Former Section R17-4-208 renumbered without change as Section R17-4-413 (Supp. 87-2). Section recodified to R17-4-457 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 2155, effective August 4, 2007 (Supp. 07-2).

R17-4-414. Commercial Driver License Applicant Driver History Check; Required Action; Hearing

A. Applicability. The provisions of this Section shall apply to all applicants requesting an original, renewal, reinstatement, transfer, or upgrade of a commercial driver license or commercial driver license instruction permit.

B. Driver History Check. In compliance with 49 CFR 384.206, 384.210, 384.225, and 384.232:
1. The Department shall require each applicant for a commercial driver license to supply the names of all states where the applicant has previously been licensed to operate a motor vehicle.
2. The Department shall request the complete driver history record from all states where the applicant was licensed to operate a motor vehicle within the previous 10 years. The Department shall make a driver history request no earlier than:
   a. Twenty-four hours prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who does not currently possess a valid Arizona commercial driver license; or
   b. Ten days prior to the issuance of a commercial driver license or commercial driver license instruction permit for an applicant who currently possesses a valid Arizona commercial driver license.
3. The Department shall record and maintain as part of the driver history all convictions, disqualifications, and other licensing actions for violations of any state or local law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a commercial driver licensee or any driver operating a commercial motor vehicle.

C. Required Action. In compliance with 49 CFR 384.210 and 384.231:
1. The Department shall, based on the findings of the driver history checks, issue a commercial driver license or commercial driver license instruction permit to a qualified applicant.
2. In the case of a reported conviction, disqualification, or other licensing action, the Department shall promptly cancel, disqualify, suspend, or revoke the person's commercial driving privilege as prescribed under A.R.S. Title 28, Chapters 4, 6, 8, and 14 and A.A.C. Title 17.
3. The Department shall send written notification of the action to the person describing the action taken by the Department.

D. Hearing. A hearing may be allowed when the driver history information received by the Department is a result of a case of mistaken identity or identity theft.
1. The person shall submit a hearing request in writing and comply with A.A.C. R17-1-502.
2. The hearing request shall be submitted within 20 days from the date the notice of action was mailed.
3. The hearing request shall indicate whether the request for the hearing is based on a case of identity theft or mistaken identity.
4. The hearing shall be held in accordance with the procedures prescribed under A.R.S. § 28-3317 and 17 A.A.C. 1, Article 5.
5. It shall be presumed that the information received from the driver history check belongs to the person. The person may overcome this presumption if the person is able to present evidence that either:
   a. The person is not the driver convicted of the reported violation as in a case of mistaken identity; or
   b. The person's identity was stolen and the applicant or licensee was not the driver convicted of the violation.
6. The scope of the hearing is limited to determining whether the person is the driver convicted of the reported

driver history information, not the validity of the underlying conviction or licensing action that occurred in another licensing jurisdiction.

Historical Note
Adopted effective December 18, 1995 (Supp. 95-4). Section recodified to R17-4-458 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 14 A.A.R. 4100, effective October 7, 2008 (Supp. 08-4).

R17-4-415. Reserved

R17-4-416. Reserved

R17-4-417. Reserved

R17-4-418. Reserved

R17-4-419. Reserved

R17-4-420. Recodified

Historical Note
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section recodified to R17-4-459 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-421. Recodified

Historical Note
Former Rule, General Order 79. Former Section R17-4-33 renumbered without change as Section R17-4-421 (Supp. 87-2). Section recodified to R17-4-460 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-422. Recodified

Historical Note
Adopted as an emergency effective July 29, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 12, 1986 (Supp. 86-1). Former Section R17-4-73 renumbered without change as Section R17-4-422 (Supp. 87-2). Section recodified to R17-4-461 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-423. Recodified

Historical Note
Former Rule, General Order 94. Former Section R17-4-38 renumbered without change as Section R17-4-423 (Supp. 87-2). Section R17-4-423 repealed, new Section adopted effective February 21, 1990 (Supp. 90-1). Section recodified to R17-4-462 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-424. Recodified

Historical Note
Former Rule, General Order 99. Former Section R17-4-40 renumbered without change as Section R17-4-424 (Supp. 87-2). Section recodified to R17-4-463 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-425. Recodified

Historical Note
Former Section R17-4-53 renumbered without change as Section R17-4-425 (Supp. 87-2). Section recodified to R17-4-464 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-426. Recodified

Historical Note
Adopted effective January 12, 1977 (Supp. 77-1). Amended subsections (A), (C), (D), and (H) effective January 23, 1981 (Supp. 81-1). Former Section R17-4-55 renumbered without change as Section R17-4-426 (Supp. 87-2). Section recodified to R17-4-465 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-427. Recodified

Historical Note
Adopted effective March 31, 1978 (Supp. 78-2). Former Section R17-4-58 renumbered without change as Section R17-4-427 (Supp. 87-2). Section recodified to R17-4-466 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-428. Recodified

Historical Note
New Section recodified from A.A.C. R17-3-403 at 7 A.A.R. 1260, effective February 20, 2001 (Supp. 01-1). Section recodified to R17-4-467 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-429. Reserved

R17-4-430. Reserved

R17-4-431. Reserved

R17-4-432. Reserved

R17-4-433. Reserved

R17-4-434. Reserved

R17-4-435. Recodified

Historical Note
Adopted as an emergency effective July 1, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R17-4-63 adopted as an emergency now adopted and amended as a permanent rule effective October 8, 1982 (Supp. 82-5). Amended effective August 19, 1983 (Supp. 83-4). Correction to amendments shown effective August 19, 1983. The subsection "IT IS ORDERED: --" was also amended effective August 19, 1983, but not shown (Supp. 83-5). Amended effective February 18, 1986 (Supp. 86-1). Amended effective May 12, 1986 (Supp. 86-3). Adding Historical Note for Supp. 87-1, "Amended effective February 28, 1987." Former Section R17-4-63 renumbered as Section R17-4-435 and amended by adding a new subsection (C) effective April 7, 1987 (Supp. 87-2). Amended by adding paragraph (20) in subsection (B) and renumbering accordingly effective March 23, 1989 (Supp. 89-1). Amended as an emergency effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency amendments re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days; permanent amendments adopted effective May 18, 1990 (Supp. 90-2). Section R17-4-435 repealed, new Section R17-4-435 adopted effective October 24, 1990 (Supp. 90-4). Emergency amendments effective November 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4) Emergency expired. Emergency

amendments readopted effective May 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Amended and renumbered to R17-4-435 and R17-4-435.01 through R17-4-435.04 effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-202 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.01. Recodified

Historical Note

Section R17-4-435.01 renumbered from R17-4-435(C) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-203 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.02. Recodified

Historical Note

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective October 16, 1996 (Supp. 96-4). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-204 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.03. Recodified

Historical Note

Section R17-4-435.03 adopted effective August 16, 1991 (Supp. 91-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 662, effective January 11, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-205 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.04. Recodified

Historical Note

Section R17-4-435.04 renumbered from R17-4-435(E), (F) and (G) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-206 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.05. Recodified

Historical Note

Section R17-4-435.02 renumbered from R17-4-435(D) and amended effective August 16, 1991 (Supp. 91-3). Amended by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-207 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-435.06. Recodified

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 770, effective February 1, 2000 (Supp. 00-1). Section recodified to R17-5-208 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-436. Recodified

Historical Note

Adopted effective October 24, 1990 (Supp. 90-4). Amended effective July 3, 1991 (Supp. 91-3). Amended effective February 28, 1992 (Supp. 92-1). Amended effective October 21, 1993 (Supp. 93-4). Amended effective August 12, 1994 (Supp. 94-3). Amended effective November 21, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3841, effective September 13, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 3215, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-5-209 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-437. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.01. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.02. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.03. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

Appendix A. Emergency Expired

Historical Note

Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-437.04. Emergency Expired

Historical Note
Emergency rule adopted effective April 9, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired.

R17-4-438. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-210 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-439. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-211 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-440. Recodified

Historical Note
Adopted effective March 21, 1994 (Supp. 94-1). Section recodified to R17-5-212 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-441. Reserved

R17-4-442. Reserved

R17-4-443. Reserved

R17-4-444. Repealed

Historical Note
Amended effective January 5, 1977 (Supp. 77-1). Repealed as an emergency effective August 18, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Repealed effective November 30, 1983 (Supp. 83-6). New Section R17-4-52 adopted as an emergency effective July 25, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-4). Emergency expired. Permanent rule adopted effective February 27, 1986 (Supp. 86-1). Amended subsections (A) and (B) effective February 18, 1987 (Supp. 87-1). Former Section R17-4-52 renumbered without change as Section R17-4-444 (Supp. 87-2). Repealed effective October 13, 1987 (Supp. 87-4).

R17-4-445. Recodified

Historical Note
Section R17-4-421 adopted and renumbered as Section R17-4-445 effective October 13, 1987 (Supp. 87-4). Amended subsection (A) effective May 20, 1988 (Supp. 88-2). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-504 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-446. Recodified

Historical Note
Section R17-4-422 adopted and renumbered as Section R17-4-446 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-505 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-447. Recodified

Historical Note
Section R17-4-423 adopted and renumbered as Section R17-4-447 effective October 13, 1987 (Supp. 87-4). Section recodified to R17-5-506 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-448. Recodified

Historical Note
Section R17-4-424 adopted and renumbered as Section R17-4-448 effective October 13, 1987 (Supp. 87-4). Amended effective January 2, 1996 (Supp. 96-3). Section recodified to R17-5-507 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-449. Reserved

R17-4-450. Repealed

Historical Note
New Section recodified from R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-451. Repealed

Historical Note
New Section recodified from R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-452. Repealed

Historical Note
New Section recodified from R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-453. Repealed

Historical Note
New Section recodified from R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-454. Repealed

Historical Note
New Section recodified from R17-4-410 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-455. Repealed

Historical Note
New Section recodified from R17-4-411 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4351, effective September 17, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 926, effective February 13, 2002 (Supp. 02-1). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-456. Repealed

Historical Note
New Section recodified from R17-4-412 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section

repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-457. Repealed

Historical Note
New Section recodified from R17-4-413 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-458. Repealed

Historical Note
New Section recodified from R17-4-414 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-459. Repealed

Historical Note
Former Rule, General Order 58. Former Section R17-4-21 renumbered without change as Section R17-4-420 (Supp. 87-2). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-460. Repealed

Historical Note
New Section recodified from R17-4-421 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-461. Repealed

Historical Note
New Section recodified from R17-4-422 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-462. Repealed

Historical Note
New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-463. Repealed

Historical Note
New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-464. Repealed

Historical Note
New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-465. Repealed

Historical Note
New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-466. Repealed

Historical Note
New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-467. Repealed

Historical Note
New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

ARTICLE 5. SAFETY

R17-4-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, and 28-3005, in this Article, unless otherwise specified:

"Adaptation" means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

"Applicant" means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

"Application" means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

"Aura" means a sensation experienced before the onset of a neurological disorder.

"Commercial driver license physical qualifications" means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under A.A.C. R17-5-202 and R17-5-204.

"Disqualifying medical condition" means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

"Evaluation" means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

"Examination" means testing or evaluating an applicant's or licensee's:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

"Functional ability" means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

"Licensee" means a person issued a driver license by this state.

"Licensing action" means an action by the Department to:

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Section E

Statutory Authority, Definitions, and Other Applicable Rules

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-401 through R17-4-414

(All Sections, Tables, and Illustrations)

A.R.S. § 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.

A.R.S. § 28-7045. Director; state highway and route use; rules.

The director shall exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

Definitions

A.R.S. § 13-4701. Definitions

In this chapter, unless the context otherwise requires:

1. "Chop shop" means any building, lot or other premises in which one or more persons alters, destroys, disassembles, dismantles, reassembles or stores at least one motor vehicle or watercraft or two or more motor vehicle or watercraft parts from at least one vehicle or watercraft that the person or persons knows were obtained by theft, fraud or conspiracy to defraud with the intent to:
   (a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity of the motor vehicles or motor vehicle parts, including the vehicle identification number for the purpose of misrepresenting or preventing the identification of the motor vehicles or motor vehicle parts.
   (b) Sell or dispose of the motor vehicles or motor vehicle parts.
2. "Motor vehicle" means any self-propelled vehicle.
3. "Unidentifiable" means that specially trained investigative personnel who are experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques cannot establish the uniqueness of a motor vehicle or motor vehicle part.
4. "Vehicle identification number" means the number that the manufacturer or the United States or a state department of transportation assigns to a motor vehicle for the purpose of identifying the motor vehicle or a major component part of the motor vehicle. Vehicle identification number includes any combination of numbers or letters.
5. "Watercraft" has the same meaning as prescribed in section 5-301.

A.R.S. § 16-111. Definitions

For the purposes of this article, unless the context otherwise requires:

1. "Applicant" means a person who applies for a driver's license.
2. "Driver's license" means any class of driver's license or a nonoperating identification license issued by the motor vehicle division of the department of transportation.
3. "Driver's license examiner" means an employee of the motor vehicle division of the department of transportation who is authorized to examine applicants for driver's licenses.

A.R.S. § 28-101. Definitions.

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
   (a) The number of grams of alcohol per one hundred milliliters of blood.
   (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:

(a) A motor vehicle that satisfies all of the following:
(i) Is designed primarily for recreational nonhighway all-terrain travel.
(ii) Is fifty or fewer inches in width.
(iii) Has an unladen weight of one thousand two hundred pounds or less.
(iv) Travels on three or more nonhighway tires.
(v) Is operated on a public highway.
(b) A recreational off-highway vehicle that satisfies all of the following:
(i) Is designed primarily for recreational nonhighway all-terrain travel.
(ii) Is eighty or fewer inches in width.
(iii) Has an unladen weight of two thousand five hundred pounds or less.
(iv) Travels on four or more nonhighway tires.
(v) Has a steering wheel for steering control.
(vi) Has a rollover protective structure.
(vii) Has an occupant retention system.

4. "Authorized emergency vehicle" means any of the following:
(a) A fire department vehicle.
(b) A police vehicle.
(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.
7. "Automotive recycler" means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.
8. "Autonomous vehicle" means a motor vehicle that is equipped with an automated driving system.
9. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.
10. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:
(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

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

11. "Board" means the transportation board.
12. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
13. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.
14. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
15. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
16. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.
17. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.
18. "Conviction" means:
    (a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.
    (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
    (c) A plea of guilty or no contest accepted by the court.
    (d) The payment of a fine or court costs.
19. "County highway" means a public road that is constructed and maintained by a county.
20. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
21. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
22. "Digital network or software application" has the same meaning prescribed in section 28-9551.
23. "Director" means the director of the department of transportation.
24. "Drive" means to operate or be in actual physical control of a motor vehicle.
25. "Driver" means a person who drives or is in actual physical control of a vehicle.
26. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
27. "Dynamic driving task":
    (a) Means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic.

(b) Includes:

(i) Lateral vehicle motion control by steering.

(ii) Longitudinal motion control by acceleration and deceleration.

(iii) Monitoring the driving environment by object and event detection, recognition, classification and response preparation.

(iv) Object and event response execution.

(v) Maneuver planning.

(vi) Enhancing conspicuity by lighting, signaling and gesturing.

(c) Does not include strategic functions such as trip scheduling and selecting destinations and waypoints.

28. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:

(a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.

29. "Electric miniature scooter" means a device that:

(a) Weighs less than thirty pounds.

(b) Has two or three wheels.

(c) Has handlebars.

(d) Has a floorboard on which a person may stand while riding.

(e) Is powered by an electric motor or human power, or both.

(f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

30. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

31. "Electric standup scooter":

(a) Means a device that:

(i) Weighs less than seventy-five pounds.

(ii) Has two or three wheels.

(iii) Has handlebars.

(iv) Has a floorboard on which a person may stand while riding.

(v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

32. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

33. "Farm" means any lands primarily used for agriculture production.

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

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

36. "Fully autonomous vehicle" means an autonomous vehicle that is equipped with an automated driving system designed to function as a level four or five system under SAE J3016 and that may be designed to function either:

(a) Solely by use of the automated driving system.

(b) By a human driver when the automated driving system is not engaged.

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

38. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

39. "Human driver" means a natural person in the vehicle who performs in real time all or part of the dynamic driving task or who achieves a minimal risk condition for the vehicle.

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

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

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

41. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

42. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

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

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

45. "Minimal risk condition":

(a) Means a condition to which a human driver or an automated driving system may bring a vehicle in order to reduce the risk of a crash when a given trip cannot or should not be completed.

(b) Includes bringing the vehicle to a complete stop.

46. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

47. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

48. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.
49. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:
    (a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.
    (b) The vehicle has at least four wheels in contact with the ground.
    (c) The vehicle seats at least eight passengers, including the driver.
    (d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.
    (e) The vehicle is a commercial motor vehicle as defined in section 28-5201.
    (f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.
    (g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.
    (h) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
50. "Motor vehicle":
    (a) Means either:
        (i) A self-propelled vehicle.
        (ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.
    (b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:
        (i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.
        (ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
51. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine

powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

52. "Neighborhood electric shuttle":
    (a) Means a self-propelled electrically powered motor vehicle to which all of the following apply:
        (i) The vehicle is emission free.
        (ii) The vehicle has at least four wheels in contact with the ground.
        (iii) The vehicle is capable of transporting at least eight passengers, including the driver.
        (iv) The vehicle is a commercial motor vehicle as defined in section 28-5201.
        (v) The vehicle is a vehicle for hire as defined in section 28-9501 and operates under a vehicle for hire company permit issued pursuant to section 28-9503.
        (vi) The vehicle complies with the definition and standards for low-speed vehicles set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
    (b) Includes a vehicle that meets the standards prescribed in subdivision (a) of this paragraph and that has been modified after market and not by the manufacturer to transport up to fifteen passengers, including the driver.
53. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:
    (a) The vehicle is emission free.
    (b) The vehicle has at least four wheels in contact with the ground.
    (c) The vehicle complies with the definition and standards for low-speed vehicles, unless excepted or exempted under federal law, set forth in 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.
54. "Neighborhood occupantless electric vehicle" means a neighborhood electric vehicle that is not designed, intended or marketed for human occupancy.
55. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.
56. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.
57. "Operational design domain":
    (a) Means operating conditions under which a given automated driving system is specifically designed to function.
    (b) Includes roadway types, speed range, environmental conditions, such as weather or time of day, and other domain constraints.
58. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

59. "Owner" means:
    (a) A person who holds the legal title of a vehicle.
    (b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.
    (c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.
60. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.
61. "Personal delivery device":
    (a) Means a device that is both of the following:
        (i) Manufactured for transporting cargo and goods in an area described in section 28-1225.
        (ii) Equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.
    (b) Does not include a personal mobile cargo carrying device.
62. "Personal mobile cargo carrying device" means an electronically powered device that:
    (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
    (b) Weighs less than eighty pounds, excluding cargo.
    (c) Operates at a maximum speed of twelve miles per hour.
    (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
    (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.
63. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.
64. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.
65. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the

removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

66. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.
67. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.
68. "SAE J3016" means surface transportation recommended practice J3016 taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles published by SAE international in June 2018.
69. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:
    (a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.
    (b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.
70. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.
71. "Scrap vehicle" has the same meaning prescribed in section 44-1641.
72. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
73. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.
74. "State" means a state of the United States and the District of Columbia.
75. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.
76. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.
77. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.
78. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

79. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
80. "Traffic survival school" means a school that is licensed pursuant to chapter 8, article 7.1 of this title and that offers educational sessions that are designed to improve the safety and habits of drivers and that are approved by the department.
81. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
82. "Transportation network company" has the same meaning prescribed in section 28-9551.
83. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.
84. "Transportation network service" has the same meaning prescribed in section 28-9551.
85. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.
86. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.
87. "Vehicle":
    (a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.
    (b) Does not include:
        (i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.
        (ii) Devices used exclusively on stationary rails or tracks.
        (iii) Personal delivery devices.
        (iv) Scrap vehicles.
        (v) Personal mobile cargo carrying devices.
88. "Vehicle transporter" means either:
    (a) A truck tractor capable of carrying a load and drawing a semitrailer.
    (b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-601. Definitions.

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise, that is a commercial motor vehicle as defined in section 28-5201 and that is not exempt from gross weight fees as prescribed in section 28-5432, subsection B.
2. "Controlled access highway" means a highway, street or roadway to or from which owners or occupants of abutting lands and other persons have no legal right of access except at such points only and in the manner determined by the public authority that has jurisdiction over the highway, street or roadway.
3. "Crosswalk" means:
   (a) That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.
   (b) Any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface.
4. "Escort vehicle" means a vehicle that is required pursuant to rules adopted by the department to escort motor vehicles or combinations of vehicles that require issuance of a permit pursuant to article 18 or 19 of this chapter for operation on the highways of this state.
5. "Explosives" means any chemical compound, mixture or device that is commonly used or intended for the purpose of producing an explosion and that is defined in 49 Code of Federal Regulations part 173.
6. "Flammable liquid" means any liquid that has a flash point of less than one hundred degrees Fahrenheit and that is defined in 49 Code of Federal Regulations section 173.120.
7. "Gross weight" means the weight of a vehicle without a load plus the weight of any load on the vehicle.
8. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict. If a highway includes two roadways thirty or more feet apart, each crossing of each roadway of the divided highway by an intersecting highway is a separate intersection. If the intersecting highway also includes two roadways thirty or more feet apart, each crossing of two roadways of the highways is a separate intersection.
9. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state that pertain to the licensing of persons to operate motor vehicles.
10. "Low emission and energy efficient vehicle" means a vehicle that has been certified by the United States environmental protection agency administrator in accordance with 23 United States Code section 166 or that is part of a federally approved pilot program.
11. "Motorized wheelchair" means any self-propelled wheelchair that is used by a person for mobility.

12. "Official traffic control device" means any sign, signal, marking or device that is not inconsistent with this chapter and that is placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.
13. "Park", if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.
14. "Photo enforcement system" means a device substantially consisting of a radar unit or sensor linked to a camera or other recording device that produces one or more photographs, microphotographs, videotapes or digital or other recorded images of a vehicle's license plate for the purpose of identifying violators of articles 3 and 6 of this chapter.
15. "Pneumatic tire" means a tire in which compressed air is designed to support the load.
16. "Pole trailer" means a vehicle that is all of the following:
    (a) Without motive power.
    (b) Designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle.
    (c) Used ordinarily for transporting long or irregularly shaped loads such as poles, pipes or structural members capable generally of sustaining themselves as beams between the supporting connections.
17. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic rules or other offenses.
18. "Private road or driveway" means a way or place that is in private ownership and that is used for vehicular travel by the owner and those persons who have express or implied permission from the owner but not by other persons.
19. "Railroad" means a carrier of persons or property on cars operated on stationary rails.
20. "Railroad sign or signal" means a sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.
21. "Railroad train" means a steam engine or any electric or other motor that is with or without cars coupled to the steam engine or electric or other motor and that is operated on rails.
22. "Roadway" means that portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.
23. "Safety zone" means the area or space that is both:
    (a) Officially set apart within a roadway for the exclusive use of pedestrians.
    (b) Protected or either marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.
24. "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for the use of pedestrians.
25. "Stop", if required, means complete cessation from movement.

26. "Stop, stopping or standing", if prohibited, means any stopping or standing of an occupied or unoccupied vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control sign or signal.
27. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.
28. "Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel.
29. "Traffic control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
30. "Truck" means a motor vehicle that is designed, used or maintained primarily for the transportation of property.

A.R.S. § 28-644. Obedience to and required traffic control devices

A. Unless otherwise directed by a traffic or police officer and subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter, the driver of a vehicle shall:
   1. Obey the instructions of an official traffic control device applicable to the driver that is placed in accordance with this chapter.
   2. Not drive over or across or park in any part of a gore area. This paragraph does not apply to the driver of a vehicle that is disabled while on the paved or main traveled portion of a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position. For the purposes of this paragraph, "gore area" means the area that is between a through roadway and an entrance ramp or exit ramp and that is defined by two wide solid white lines that guide traffic entering or exiting a roadway. Gore area does not include a safety zone.

B. Any provision of this chapter that requires signs shall not be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. If a particular section of law does not state that signs are required, that section is effective even though no signs are erected or in place.

A.R.S. § 28-1301. Definitions

In this chapter, unless the context otherwise requires:

1. "Certified ignition interlock device" means an ignition interlock device that is certified pursuant to article 5 of this chapter.
2. "Circumvent" or "circumvention" means an attempted or successful bypass of the proper functioning of a certified ignition interlock device and includes all of the following:
   (a) The bump start of a motor vehicle with a certified ignition interlock device.
   (b) The introduction of a false sample other than a deep-lung breath sample from the person driving the motor vehicle.

(c) The introduction of an intentionally contaminated or a filtered breath sample.

(d) The intentional disruption or blocking of a digital image identification device.

(e) The continued operation of the motor vehicle after the certified ignition interlock device detects breath alcohol exceeding the presumptive limit prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the motor vehicle with any spirituous liquor in the person's body.

(f) Operating a motor vehicle without a properly functioning certified ignition interlock device.

(g) Allowing a person other than the person who is required to maintain a functioning certified ignition interlock device pursuant to this chapter to breathe into the certified ignition interlock device for the purpose of providing a breath alcohol sample to start the motor vehicle or for the rolling retest.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code sections 5101 through 5127) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

4. "Education" means a program in which a person participates in at least sixteen hours of classroom instruction relating to alcohol or other drugs.

5. "Ignition interlock device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the national highway traffic safety administration specifications, that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start the motor vehicle by using its ignition system and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level.

6. "Ignition interlock service provider" means a person who is an authorized representative of a manufacturer and who is under contract with the department to install or oversee the installation of ignition interlock devices by the provider's authorized agents or subcontractors and to provide services to the public related to ignition interlock devices.

7. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

8. "Manufacturer" means a person or an organization that is located in the United States, that is responsible for the design, construction or production of an ignition interlock device and that is certified by the department to offer ignition interlock devices for installation in motor vehicles in this state.
9. "Rolling retest" means a breath alcohol test that is required of a person at random intervals after the motor vehicle is started and that is in addition to the initial test required to start the motor vehicle.
10. "Screening" means a preliminary interview and assessment of an offender to determine if the offender requires alcohol or other drug education or treatment.
11. "Tampering" means an overt or conscious attempt to physically disable or otherwise disconnect the certified ignition interlock device from its power source that allows the operator to start the engine without taking and passing the requisite breath test.
12. "Technician" means a person who is certified and properly trained by an ignition interlock service provider to install, inspect, repair, calibrate, service or remove certified ignition interlock devices.
13. "Treatment" means a program consisting of at least twenty hours of participation in a group setting dealing with alcohol or other drugs in addition to the sixteen hours of education.

A.R.S. § 28-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.
2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.
3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:
   (a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
   (b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.
   (c) A bus.
   (d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.
4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:
   (a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.

(b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.

(c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.

5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.
6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.
7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.
8. "Foreign" means outside the United States.
9. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.
10. "Judgment" means a final judgment and any of the following:
    (a) The finding by a court that an individual is responsible for a civil traffic violation.
    (b) An individual's admission of responsibility for a civil traffic violation.
    (c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
    (d) A default judgment entered by a court pursuant to section 28-1596.
11. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.
12. "Nondomiciled commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.
13. "Original applicant" means any of the following:
    (a) An applicant who has never been licensed or cannot provide evidence of licensing.
    (b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.
    (c) An applicant who has a license from a foreign country.
14. "Revocation" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.
15. "State of domicile" means the state or jurisdiction where a person has the person's true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.

16. "Suspension" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.
17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

A.R.S. § 8-513. Participation in activities; contact with relatives; placement with siblings; independent living programs

A. A child may participate in activities and functions generally accepted as usual and normal for children of the child's age group if permission is granted as follows:
   1. If the activity by law requires a license, the agency or division that placed the child may give permission on request of the foster parent.
   2. If the activity includes the child leaving the jurisdiction of the court for a period not to exceed thirty days, the agency or division that placed the child may give permission on request of the foster parent.
   3. If the activity is one which is associated with a school or organization not prohibited by rule of the division, the foster parents of the child may give permission.

B. The state shall indemnify and hold harmless the agency or foster parents for liability that may be incurred or alleged as a result of giving permission pursuant to subsection A if it is reasonably and prudently given. The state shall provide the defense of any action alleging such liability.

C. A child placed in foster care has the right to maintain contact with friends and relatives unless the court has determined that contact is not in the child's best interests as determined pursuant to a court hearing.

D. If a child has been removed from the child's home and placed in out-of-home placement, guardianship or adoptive placement, the department shall make reasonable efforts to place that child with the child's siblings or, if that is not possible, to maintain frequent visitation or other ongoing contact between the child and the child's siblings unless a court determines that either the placement or the visitation or contact would be contrary to the child's or a sibling's safety or well-being.

E. The out-of-home provider for a youth who is at least sixteen years of age shall work with independent living programs that are focused on career, education and future development planning to assist the youth in meeting program goals.

A.R.S. § 16-112. Driver license voter registration

A. Every person who is applying for a driver license or renewal and who is otherwise qualified to register to vote shall, at the same time and place, be permitted to register to vote by providing the information prescribed by section 16-152. The method used to register voters shall require only the minimum information necessary to prevent duplicate registrations, to enable elections officials to determine voter eligibility and to administer voter registration and election laws. A registration form shall be included for a person who is applying for a driver license renewal by mail. On completion of a form that contains at least the information prescribed by section 16-121.01, subsection A and that may contain the information prescribed by section 16-152 and on receipt of that form by the county recorder from the department of transportation as prescribed by subsection D of this section, the applicant is presumed to be properly registered to vote. That presumption may be rebutted as provided in section 16-121.01, subsection B.

B. The director of the department of transportation and the secretary of state shall consult at least every two years regarding voter registration at driver license offices. The director of the department of transportation and the secretary of state shall, after consultation with all county recorders, adopt rules to implement a system permitting driver license applicants to register to vote at the same time and place as they apply for driver licenses. Such rules shall:
   1. Bring the license application and voter registration application forms into substantial conformity.
   2. Permit the transfer of driver license applications, including renewal and change of address, and voter registration information from the department of transportation to the voter registration rolls.
   3. Respect all rules and statutes of this state concerning the confidentiality of driver license application information.
   4. Provide for the manual or electronic generation and transmittal of voter registrations and provide for electronic generation of changes in voter registration information, including address, in conformity with the confidentiality requirements of the national voter registration act of 1993 (P.L. 103-31; 107 Stat. 77; 42 United States Code section 394).

C. The department of transportation shall provide to applicants a statement that provides each eligibility requirement for voting, including citizenship, an attestation that the applicant meets each requirement, for the signature of the applicant under penalty of perjury and, in print that is identical to that used in the attestation, the following:
   1. A description of the penalties provided by law for the submission of a false voter registration application.
   2. A statement that if an applicant declines to register to vote the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
   3. A statement that if an applicant does register to vote the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

D. The department of transportation shall return or mail completed registrations to the county recorder of the county in which the applicant resides within five days after receipt of a completed registration.

A.R.S. § 28-1381. Driving or actual physical control while under the influence; trial by jury; presumptions; admissible evidence; sentencing; classification

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:
   1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.
   2. If the person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
   3. While there is any drug defined in section 13-3401 or its metabolite in the person's body.

4. If the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in section 28-3001 and the person has an alcohol concentration of 0.04 or more.

B. It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state.

C. A person who is convicted of a violation of this section is guilty of a class 1 misdemeanor.

D. A person using a drug as prescribed by a medical practitioner who is licensed pursuant to title 32 and who is authorized to prescribe the drug is not guilty of violating subsection A, paragraph 3 of this section.

E. In any prosecution for a violation of this section, the state shall allege, for the purpose of classification and sentencing pursuant to this section, all prior convictions of violating this section, section 28-1382 or section 28-1383 occurring within the past thirty-six months, unless there is an insufficient legal or factual basis to do so.

F. At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.

G. In a trial, action or proceeding for a violation of this section or section 28-1383 other than a trial, action or proceeding involving driving or being in actual physical control of a commercial vehicle, the defendant's alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:

1. If there was at that time 0.05 or less alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was not under the influence of intoxicating liquor.
2. If there was at that time in excess of 0.05 but less than 0.08 alcohol concentration in the defendant's blood, breath or other bodily substance, that fact shall not give rise to a presumption that the defendant was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
3. If there was at that time 0.08 or more alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was under the influence of intoxicating liquor.

H. Subsection G of this section does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

I. A person who is convicted of a violation of this section:

1. Shall be sentenced to serve not less than ten consecutive days in jail and is not eligible for probation or suspension of execution of sentence unless the entire sentence is served.
2. Shall pay a fine of not less than $250.
3. May be ordered by a court to perform community restitution.
4. Shall pay an additional assessment of $500 to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.

5. Shall pay an additional assessment of $500 to be deposited by the state treasurer in the public safety equipment fund established by section 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
6. If the violation involved intoxicating liquor, shall be required by the department, on report of the conviction, to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.
7. Shall be required by the department to attend and successfully complete an approved traffic survival school course.

J. Notwithstanding subsection I, paragraph 1 of this section, at the time of sentencing the judge may suspend all but one day of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

K. If within a period of eighty-four months a person is convicted of a second violation of this section or is convicted of a violation of this section and has previously been convicted of a violation of section 28-1382 or 28-1383 or an act in another jurisdiction that if committed in this state would be a violation of this section or section 28-1382 or 28-1383, the person:
1. Shall be sentenced to serve not less than ninety days in jail, thirty days of which shall be served consecutively, and is not eligible for probation or suspension of execution of sentence unless the entire sentence has been served.
2. Shall pay a fine of not less than $500.
3. Shall be ordered by a court to perform at least thirty hours of community restitution.
4. Shall have the person's driving privilege revoked for one year. The court shall report the conviction to the department. On receipt of the report, the department shall revoke the person's driving privilege and, if the violation involved intoxicating liquor, shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to

reinstate the person's driver license or driving privilege. The person who operates a motor vehicle with a certified ignition interlock device under this paragraph shall comply with article 5 of this chapter.

5. Shall pay an additional assessment of $1,250 to be deposited by the state treasurer in the prison construction and operations fund established by section 41-1651. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
6. Shall pay an additional assessment of $1,250 to be deposited by the state treasurer in the public safety equipment fund established by section 41-1723. This assessment is not subject to any surcharge. If the conviction occurred in the superior court or a justice court, the court shall transmit the assessed monies to the county treasurer. If the conviction occurred in a municipal court, the court shall transmit the assessed monies to the city treasurer. The city or county treasurer shall transmit the monies received to the state treasurer.
7. Shall be required by the department to attend and successfully complete an approved traffic survival school course.

L. Notwithstanding subsection K, paragraph 1 of this section, at the time of sentencing, the judge may suspend all but thirty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

M. In applying the eighty-four month provision of subsection K of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

N. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

O. After completing forty-five days of the revocation period prescribed by subsection K of this section, a person whose driving privilege is revoked for a violation of this section and who is sentenced pursuant to subsection K of this section is eligible for a special ignition interlock restricted driver license pursuant to section 28-1401.

P. The court may order a person who is convicted of a violation of this section that does not involve intoxicating liquor to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. On receipt of the report of conviction and certified ignition interlock device requirement, the department shall require the person to equip any motor vehicle the person operates with a certified ignition interlock device pursuant to section 28-3319. In addition, the court may order the person to equip any motor vehicle the person operates with a certified ignition interlock device for more than twelve months beginning on the date the person successfully completes the alcohol or other drug screening, education or treatment program requirements of this title and the person is otherwise eligible to reinstate the person's driver license or driving

privilege. The person who operates a motor vehicle with a certified ignition interlock device under this subsection shall comply with article 5 of this chapter.

A.R.S. § 28-1385. Administrative license suspension for driving under the influence or for homicide or assault involving a motor vehicle; report; hearing; summary review; ignition interlock device requirement

A. A law enforcement officer shall forward to the department a certified report as prescribed in subsection B of this section, subject to the penalty for perjury prescribed by section 28-1561, if both of the following occur:
   1. The officer arrests a person for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   2. The person submits to a test of the person's blood, breath, urine or other bodily substance that is allowed by section 28-1321 or any other law or a sample of blood is obtained pursuant to section 28-1388 and the results are either not available or the results indicate any of the following:
      (a) 0.08 or more alcohol concentration in the person's blood or breath.
      (b) 0.04 or more alcohol concentration in the person's blood or breath if the person was driving or in actual physical control of a commercial motor vehicle.
      (c) Any drug defined in section 13-3401 or its metabolite is in the person's body except if the person possesses a valid prescription for the drug.

B. The officer shall make the certified report required by subsection A of this section on forms supplied or approved by the department. The report shall state information that is relevant to the enforcement action, including:
   1. Information that adequately identifies the arrested person.
   2. A statement of the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle in violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   3. A statement that the person was arrested for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   4. A report of the results of the blood or breath alcohol test that was administered, if the results are available.

C. If a breath test is administered, a law enforcement agency shall forward the certified report that is required by subsection A of this section to the department within thirty days after the arrest occurs. If a sample of blood, urine or other bodily substance is obtained, the law enforcement agency shall forward the certified report that is required by subsection A of this section to the department within thirty days after the date the report of the analysis is provided to the law enforcement agency. If a report is not forwarded to the department within the time limit prescribed by this subsection, the report is inadmissible in a hearing held pursuant to this section

unless the violation listed in subsection A of this section resulted in death or serious physical injury. For the purposes of this subsection, "serious physical injury" has the same meaning prescribed in section 13-105.

D. The officer shall also serve an order of suspension on the person on behalf of the department. The order of suspension:
   1. Is effective thirty days after the date it is served.
   2. Shall require the immediate surrender of any license or permit to drive that is issued by this state and that is in the possession or control of the person.
   3. Shall contain information concerning the right to a summary review and hearing, including information concerning the hearing as required by section 28-1321, subsections G and H.
   4. Shall be accompanied by printed forms that are ready to mail to the department, that the person may fill out and sign to indicate the person's desire for a hearing or summary review and that advise the person that the person may alternatively submit an online request for a hearing or summary review.
   5. Shall be entered on the department's records on receipt of the report by the officer and a copy of the order of suspension.
   6. Shall inform the person that the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege may be issued or reinstated following the period of suspension or issuance of a special ignition interlock restricted driver license only if the person completes alcohol or other drug screening.
   7. Shall contain information on alcohol or other drug education and treatment programs that are provided by a facility approved by the department of health services.

E. If the blood test result is unavailable at the time the test is administered, the result shall be forwarded to the department before the hearing held pursuant to this section in a form prescribed by the director.

F. If the license or permit is not surrendered pursuant to subsection D of this section, the officer shall state the reason for the nonsurrender. If a valid license or permit is surrendered, the officer shall issue a temporary driving permit that is valid for thirty days. The officer shall forward a copy of the completed order of suspension and a copy of any completed temporary permit to the department within five days after the issuance of the order of suspension along with the report. The law enforcement agency may do either of the following with a valid license or permit that is surrendered pursuant to this section:
   1. In compliance with sections 41-151.15 and 41-151.19, destroy the license or permit.
   2. Forward the license or permit to the department within five days after the issuance of the notice of suspension.

G. The department shall suspend the affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege for not less than ninety consecutive days from that date. If the person is otherwise qualified, the department may reinstate the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege following the period of suspension only if the violator completes alcohol or other drug screening.

H. Notwithstanding subsections A, B, C, D, E, F and G of this section and except as provided in subsection I of this section, the department shall suspend the driving privileges of the person described in subsection A of this section for at least thirty consecutive days and shall restrict the person's driving privileges as prescribed in section 28-144 for at least sixty consecutive additional days if the person:

1. Did not cause death or serious physical injury as defined in section 13-105 to another person during the course of conduct out of which the current action arose.
2. Has not been convicted of a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four months of the date of commission of the acts out of which the current action arose. The dates of commission of the acts are the determining factor in applying the eighty-four month provision.
3. Provides satisfactory evidence to the department of the person's completion of alcohol or other drug screening that is ordered by the department. If the person does not complete alcohol or other drug screening, the department may impose a ninety day suspension pursuant to this section.

I. In lieu of a driving privilege suspension pursuant to subsection H of this section, on a person's request, the department shall issue a special ignition interlock restricted driver license to the person if the requirements set forth in subsection H, paragraphs 1, 2 and 3 are met.

J. Notwithstanding section 28-1401, the department may issue a special ignition interlock restricted driver license to a person for an offense described in subsection A of this section. A person who applies for and who is issued a special ignition interlock restricted driver license pursuant to this subsection agrees to the administrative action taken by the department against the person's license. Once the department issues a special ignition interlock restricted driver license pursuant to this subsection, the person waives any right to an administrative hearing contesting the administrative action against the person's license pursuant to this section or section 28-1321.

K. If the officer does not serve an order of suspension pursuant to subsection D of this section and if the department does not receive the report of the results of the blood or breath alcohol test pursuant to subsection B, paragraph 4 of this section, but subsequently receives the results and the results indicate 0.08 or more alcohol concentration in the person's blood or breath, a blood or breath alcohol concentration of 0.04 or more and the person was driving or in actual physical control of a commercial motor vehicle or any drug defined in section 13-3401 or its metabolite in the person's body and the person does not possess a valid prescription for the drug, the department shall notify the person named in the report in writing sent by mail that thirty days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege. The notice shall also state that the department will provide an opportunity for a hearing and summary review if the person requests a hearing or review in writing and the request is received by the department within thirty days after the notice is sent.

L. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered license or permit to the person but may issue temporary permits to drive that expire not later than when the department has made its final decision. If the person is a resident without a license or permit

or has an expired license or permit, the department may allow the person to apply for a restricted license or permit. If the department determines the person is otherwise entitled to the restricted license or permit, the department shall issue, but retain, the license or permit, subject to this section. All hearings requested under this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306.

M. For the purposes of this section, the scope of the hearing shall include only the following issues:
   1. Whether the officer had reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor as prescribed in section 28-1381 or drugs.
   2. Whether the person was placed under arrest for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.
   3. Whether a test was taken, the results of which indicated any of the following:
      (a) An alcohol concentration in the person's blood or breath at the time the test was administered of either:
         (i) 0.08 or more.
         (ii) 0.04 or more if the person was driving or in actual physical control of a commercial motor vehicle.
      (b) Any drug defined in section 13-3401 or its metabolite in the person's body except if the person possesses a valid prescription for the drug.
   4. Whether the testing method used was valid and reliable.
   5. Whether the test results were accurately evaluated.

N. The results of the blood or breath alcohol test shall be admitted on establishing the requirements in section 28-1323 or 28-1326.

O. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective thirty days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny the issuance of a license or permit to the person for not less than ninety consecutive days. The department may reinstate the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege following the period of suspension only if the violator completes alcohol or other drug screening.

P. A person may request a summary review of an order issued pursuant to this section instead of a hearing at any time before the effective date of the order. A timely request for summary review stays the suspension until a decision is issued. The person shall submit the request in writing to the department together with any written explanation as to why the department should not suspend the driving privilege. The department shall review all reports submitted by the officer and any written explanation submitted by the person and shall determine if the order of suspension should be sustained or voided. The department shall not hold a hearing, and the review is not subject to title 41, chapter 6. The department shall notify the person of its decision.

Q. If the suspension or determination that there should be a denial of issuance is not sustained after a hearing or review, the ruling is not admissible in and does not have any effect on any civil or criminal court proceeding.

R. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the department shall give information either in writing or by electronic means of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

A.R.S. § 28-1401. Special ignition interlock restricted driver licenses; application fee

A. A person whose class D or class G license has been suspended pursuant to section 28-1385 or suspended or revoked for a first refusal pursuant to section 28-1321, a second violation of section 28-1381 or 28-1382 or a first violation of section 28-1383, subsection A, paragraph 3 may apply to the department for a special ignition interlock restricted driver license that allows the person to operate a motor vehicle during the period of suspension or revocation subject to the restrictions of the certified ignition interlock device requirements prescribed in article 5 of this chapter if the person's privilege to operate a motor vehicle has been restricted, suspended or revoked and the offense involved only alcohol or, if the person's alcohol concentration is 0.08 or more, a combination of drugs and alcohol pursuant to any of the following:

1. Section 28-1321, if the person meets the criteria of section 28-1321, subsection P.
2. Section 28-1381, if the person meets the criteria of section 28-1381, subsection O and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.
3. Section 28-1382, if the person meets the criteria of section 28-1382, subsection H and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.
4. Section 28-1383, if the person meets the criteria of section 28-1383, subsection L and the person presents evidence that is satisfactory to the director and that shows that the person has completed the requirements prescribed in section 28-1387, subsection B.
5. Section 28-1385, if the person meets the criteria of section 28-1385, subsection H.

B. An applicant for a special ignition interlock restricted driver license shall pay an application fee in an amount to be determined by the director.

C. The department shall issue a special ignition interlock restricted driver license during the period of a court-ordered restriction pursuant to sections 28-3320 and 28-3322 subject to the certified ignition interlock requirements prescribed in article 5 of this chapter.

D. If the department issues a special ignition interlock restricted driver license, the department shall not delete a suspension or revocation from its records.

A.R.S. § 28-1402. Issuance of special ignition interlock restricted driver license

A. On application pursuant to section 28-1401, subsection A the department may, and pursuant to section 28-1401, subsection C the department shall, issue a special ignition interlock restricted driver license that only

allows a person whose class D or class G license has been suspended pursuant to section 28-1385 or suspended or revoked for a first refusal pursuant to section 28-1321, a second violation of section 28-1381 or 28-1382 or a first violation of section 28-1383, subsection A, paragraph 3 to operate a motor vehicle that is equipped with a functioning certified ignition interlock device.

B. The department may only issue a special ignition interlock restricted driver license to an applicant who is otherwise qualified by law.

C. Except as provided in section 28-1463, if the department suspends, revokes, cancels or otherwise rescinds a person's special ignition interlock restricted license or privilege for any reason, the department shall not issue a new license or reinstate the special ignition interlock restricted driver license during the prescribed period of suspension or revocation or while the person is otherwise ineligible to receive a license.

A.R.S. § 28-1403. Extension of interlock restricted licenses; hearing; scope

A. A person whose driver license restriction is extended pursuant to section 28-1461 may submit to the department a written request for a hearing. The written request must be received by the department within fifteen days after the date of the order of extension of the restriction. On receipt of a request for a hearing, a hearing shall be held within thirty days.

B. Hearings requested pursuant to this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306. For the purposes of this section, the scope of the hearing shall include only the following issues:

1. Whether the person was issued a special ignition interlock restricted driver license.
2. Whether the person tampered with the certified ignition interlock device.
3. Whether the person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3, two or more times during the period of license restriction or limitation.
4. If the person is under twenty-one years of age, whether the person attempted to operate the vehicle with any spirituous liquor in the person's body during the period of license restriction or limitation.
5. Whether the person submitted proof of compliance or calibration as prescribed in section 28-1461.

A.R.S. § 28-1461. Use of certified ignition interlock devices; reporting

A. If a person's driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402:

1. The person shall:
   (a) Pay the costs for installation and maintenance of the certified ignition interlock device.
   (b) Provide proof to the department of installation of a functioning certified ignition interlock device in each motor vehicle operated by the person.
   (c) Provide proof of compliance to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

(d) Provide proof of calibration of the certified ignition interlock device to the department at least once every ninety days during the period the person is ordered to use an ignition interlock device.

2. The department shall not reinstate the person's driving privilege or issue a special ignition interlock restricted driver license until the person has installed a functioning certified ignition interlock device in each motor vehicle operated by the person and has provided proof of installation to the department.

B. While a person maintains a functioning certified ignition interlock device in a vehicle pursuant to this chapter, the ignition interlock manufacturer shall electronically provide the following information to the department in the manner and format prescribed by the department in rule, and the department shall reject any information that does not meet these requirements:

1. Any tampering or circumvention.
2. Any failure to provide proof of compliance or inspection of the certified ignition interlock device as prescribed in this section.
3. Any attempt to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3 or, if the person is under twenty-one years of age, any attempt to operate the vehicle with any spirituous liquor in the person's body.
4. Each time that a person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

C. If the person is under eighteen years of age, the ignition interlock service provider, if requested by the person's parent or legal guardian, shall provide to the person's parent or legal guardian the information prescribed in subsection B of this section.

D. On request, the ignition interlock manufacturer shall provide the information prescribed in subsection B of this section to:

1. The department of health services authorized provider.
2. The probation department that is providing alcohol or other drug screening, education or treatment to the person.
3. The physician, psychologist, physician assistant, registered nurse practitioner or substance abuse counselor who is evaluating the person's ability to safely operate a motor vehicle following a revocation of the person's driving privilege as prescribed in section 28-3315, subsection D.
4. The court.

E. The department shall extend an ignition interlock restricted or limited driver license and the certified ignition interlock device period for six months if the department has reasonable grounds to believe that any of the following applies:

1. The person tampered with or circumvented the certified ignition interlock device.
2. The person attempted to operate the vehicle with an alcohol concentration exceeding the presumptive limit as prescribed in section 28-1381, subsection G, paragraph 3, two or more times during the period of license restriction or limitation.

3. If the person is under twenty-one years of age, the person attempted to operate the vehicle with any spirituous liquor in the person's body during the period of license restriction or limitation.
4. The person failed to provide proof of compliance or inspection as prescribed in this section.
5. The person attempts to operate the vehicle with an alcohol concentration of 0.08 or more during a six month extension pursuant to this subsection.
6. The person fails to properly perform any set of three consecutive rolling retests that occur during a drive cycle.

F. If the special ignition interlock restricted license is extended pursuant to subsection E of this section, the limitations prescribed in sections 28-1381, 28-1382, 28-1383 and 28-3319 do not begin until the restrictive period of the license ends.

G. The department shall make a notation on the driving record of a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383, 28-1385 or 28-3319 or restricted pursuant to section 28-1402 that states that the person shall not operate a motor vehicle unless it is equipped with a certified ignition interlock device. Unless the person is convicted of a second or subsequent violation of section 28-1381, 28-1382 or 28-1383, the notation may not include any mark, color change or other notation or indication on the person's physical driver license.

H. Proof of compliance does not include a skipped or missed random sample if the motor vehicle's ignition is off at the time of the skipped or missed sample.

A.R.S. § 28-1464. Ignition interlock devices; violations; classification; definition

A. Except in cases of a substantial emergency, a person shall not knowingly rent, lease or lend a motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 unless the motor vehicle is equipped with a functioning certified ignition interlock device.

B. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 and who rents, leases or borrows a motor vehicle from another person shall notify the person who rents, leases or lends the motor vehicle to the person that the person has specific requirements for the operation of the motor vehicle and the nature of the requirements.

C. During any period when a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is required to operate only a motor vehicle that is equipped with a certified ignition interlock device, the person shall not request or permit any other person to breathe into the ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person with an operable motor vehicle.

D. A person shall not breathe into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402.

E. A person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

F. A person who is not an ignition interlock service provider or an agent or subcontractor of an ignition interlock service provider and who is not a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not tamper with or circumvent the operation of an ignition interlock device.

G. Except in cases of substantial emergency, a person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 shall not operate a motor vehicle without a functioning certified ignition interlock device during the applicable time period.

H. If the ignition interlock device is removed from a vehicle by an ignition interlock service provider, the ignition interlock manufacturer shall electronically notify the department in a form prescribed by the department that the ignition interlock device has been removed from the vehicle.

I. If the person does not provide evidence to the department within seventy-two hours that the person has installed a functioning certified ignition interlock device in each vehicle operated by the person and has provided proof of installation to the department, the department shall suspend the special ignition interlock restricted driver license or privilege as prescribed in section 28-1463.

J. A person who is ordered by the court or required by the department pursuant to section 28-3319 to equip any motor vehicle the person operates with a certified ignition interlock device shall while under arrest submit to any test chosen by a law enforcement officer pursuant to section 28-1321, subsection A.

K. A person who violates this section is guilty of a class 1 misdemeanor. Additionally, if a person is convicted of violating subsection B, C, E or G of this section, the department shall extend the duration of the certified ignition interlock device requirement for not more than one year.

L. For the purposes of this section, "substantial emergency" means that a person other than the person whose driving privilege is limited pursuant to section 28-1381, 28-1382, 28-1383 or 28-3319 or restricted pursuant to section 28-1402 is not reasonably available to drive in response to an emergency.

A.R.S. § 28-1465. Rulemaking; ignition interlock service providers and manufacturers; civil penalty

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for the administration and enforcement of this article, including a rule that permits the director to impose a civil penalty against a manufacturer of a certified ignition interlock device or an ignition interlock service provider who fails to properly report ignition interlock data to the director in the manner prescribed by the director. Any monies collected from civil penalties imposed for a failure to report ignition interlock data shall be deposited in the driving under the influence abatement fund established by section 28-1304.

A.R.S. § 28-1526. Point assessment

If a person violates chapter 3 or 4 of this title, the department may assess points against the person's driving record for only one violation if multiple violations result from the same action or course of conduct. For the purposes of this section, the department shall assess the number of points for the violation that the department determines has the highest number of points.

A.R.S. § 28-3002. Fees; driver licenses; disposition

A. The following fees are required:

1. For each original or initial application or renewal application, if a written examination is required, for the following:
   (a) Class A driver license, twenty-five dollars.
   (b) Class B driver license, twenty-five dollars.
   (c) Class C driver license, twelve dollars fifty cents.
   (d) Class D driver license issued pursuant to section 28-3171, ten dollars.
   (e) Class M driver license issued pursuant to section 28-3171, ten dollars.
2. Except as provided in paragraph 1, for each original, renewal or reinstatement application for a class D, G or M license:

Age	Fee
50 or older	$10.00
45-49	$15.00
40-44	$20.00
39 or younger	$25.00

3. For each original or initial application or renewal examination, if a written application is required, for the following endorsements to a driver license:
   (a) Bus endorsement, ten dollars.
   (b) Hazardous materials endorsement, ten dollars.
   (c) Tank vehicle endorsement, ten dollars.
   (d) Double-triple trailer endorsement, ten dollars.
   (e) Motorcycle endorsement, seven dollars.
4. For taking each driving test for a:
   (a) Class A driver license, twenty-five dollars.
   (b) Class B driver license, twenty-five dollars.
   (c) Class C driver license, twelve dollars fifty cents.
   (d) Bus endorsement, five dollars.
5. For each application for an instruction permit under:
   (a) Section 28-3154 or 28-3156, seven dollars.
   (b) Section 28-3155, three dollars.
   (c) Section 28-3225, class A, twenty-five dollars.
   (d) Section 28-3225, class B, twenty-five dollars.

(e) Section 28-3225, class C, twelve dollars fifty cents.

6. For each renewal application, if a written examination is not required, for a:
   (a) Class A driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.
   (b) Class B driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.
   (c) Class C driver license and any endorsement, other than a hazardous materials endorsement, to the license, ten dollars.
7. For each application for a duplicate of a driver license, an amount determined by the director.
8. For each application for a duplicate of an instruction permit, two dollars.
9. In addition to the fees prescribed in paragraph 2 and except as provided in paragraph 11:
   (a) For reinstatement of driving privileges after suspension or disqualification, ten dollars.
   (b) For reinstatement of driving privileges after revocation, twenty dollars.
10. For each application for an extension by mail of a driver license, five dollars.
11. In addition to the fees prescribed in paragraph 2, for reinstatement of driving privileges that were suspended or denied pursuant to section 28-1385 after completion of the suspension or revocation, fifty dollars.
12. For vision screening tests of out-of-state drivers, five dollars.
13. For class D or M driver license skills tests for out-of-state drivers, fifteen dollars.
14. For a driver license or nonoperating identification license issued pursuant to section 28-3175, an amount to be determined by the director.

B. Except as otherwise provided by statute, the director shall immediately deposit, pursuant to sections 35-146 and 35-147, fees collected under this section in the Arizona highway user revenue fund.

C. The fees established pursuant to this section do not apply to a veteran who does not have a residence address or whose residence address is the address of a shelter that provides services to the homeless. For the purposes of this subsection, "veteran" has the same meaning prescribed in section 41-601.

A.R.S. § 28-3153. Driver license issuance; prohibitions

A. The department shall not issue the following:
   1. A driver license to a person who is under eighteen years of age, except that the department may issue:
      (a) A restricted instruction permit for a class D or G license to a person who is at least fifteen years of age.
      (b) An instruction permit for a class D, G or M license as provided by this chapter to a person who is at least fifteen years and six months of age.
      (c) A class G or M license as provided by this chapter to a person who is at least sixteen years of age.
   2. A class D, G or M license or instruction permit to a person who is under eighteen years of age and who has been tried in adult court and convicted of a second or subsequent violation of criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or convicted of a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful

use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, or who has been adjudicated delinquent for a second or subsequent act that would constitute criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or adjudicated delinquent for an act that would constitute a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, if committed by an adult.

3. A class A, B or C license to a person who is under twenty-one years of age, except that the department may issue a class A, B or C license that is restricted to only intrastate driving to a person who is at least eighteen years of age.
4. A license to a person whose license or driving privilege has been suspended, during the suspension period.
5. Except as provided in section 28-3315, a license to a person whose license or driving privilege has been revoked.
6. A class A, B or C license to a person who has been disqualified from obtaining a commercial driver license.
7. A license to a person who on application notifies the department that the person is an alcoholic as defined in section 36-2021 or a drug dependent person as defined in section 36-2501, unless the person submits a medical examination report that includes a current evaluation from a substance abuse counselor indicating that, in the opinion of the counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle.
8. A license to a person who has been adjudged to be incapacitated pursuant to section 14-5304 and who at the time of application has not obtained either a court order that allows the person to drive or a termination of incapacity as provided by law.
9. A license to a person who is required by this chapter to take an examination unless the person successfully passes the examination.
10. A license to a person who is required under the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited the proof.
11. A license to a person if the department has good cause to believe that the operation of a motor vehicle on the highways by the person would threaten the public safety or welfare.
12. A license to a person whose driver license has been ordered to be suspended for failure to pay child support, except that a noncommercial restricted license may be issued pursuant to section 25-518.
13. A class A, B or C license to a person whose license or driving privilege has been canceled until the cause for the cancellation has been removed.
14. A class A, B or C license or instruction permit to a person whose state of domicile is not this state.
15. A class A, B or C license to a person who fails to demonstrate proficiency in the English language as determined by the department.

B. The department shall not issue a driver license to or renew the driver license of the following persons:

1. A person about whom the court notifies the department that the person violated the person's written promise to appear in court when charged with a violation of the motor vehicle laws of this state until the department receives notification in a manner approved by the department that the person appeared either voluntarily or involuntarily or that the case has been adjudicated, that the case is being appealed or that the case has otherwise been disposed of as provided by law.
2. If notified pursuant to section 28-1601, a person who fails to pay a civil penalty as provided in section 28-1601, except for a parking violation, until the department receives notification in a manner approved by the department that the person paid the civil penalty, that the case is being appealed or that the case has otherwise been disposed of as provided by law.

C. The magistrate or the clerk of the court shall provide the notification to the department prescribed by subsection B of this section.

D. Notwithstanding any other law, the department shall not issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. For an application for a driver license or a nonoperating identification license, the department shall not accept as a primary source of identification a driver license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law. The director shall adopt rules necessary to carry out the purposes of this subsection. The rules shall include procedures for:
1. Verification that the applicant's presence in the United States is authorized under federal law.
2. Issuance of a temporary driver permit pursuant to section 28-3157 pending verification of the applicant's status in the United States.

A.R.S. § 28-3158. Driver license or instruction permit application

A. A person who applies for an instruction permit or for a driver license shall use a form furnished by the department.

B. An applicant shall pay the fee prescribed by section 28-3002 for a driver license or for an instruction permit issued under section 28-3154, 28-3155, 28-3156 or 28-3225. The department shall refund an application fee pursuant to section 28-373.

C. An applicant for an instruction permit or a driver license shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and domicile residence address in this state, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law.

D. The application for an instruction permit or a driver license shall state the following:
1. A brief description of the applicant and any other identifying information required by the department.
2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued and what state or country issued the license.
3. If the applicant was never licensed, the applicant's last previous state or country of residence.
4. The social security number of the applicant.

E. The department shall:

1. Verify that a social security number provided by an applicant is a valid number assigned to that applicant.
2. Retain the social security number in its records.

F. The social security number provided to the department pursuant to subsection D of this section for an applicant's driver license or instruction permit shall not appear on an applicant's driver license or instruction permit unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. Except as provided in sections 28-455 and 41-1954, the department shall not release the social security number to any person unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. The provisions of this subsection shall be included in each application.

G. The department may adopt and implement procedures to deny a driver license or instruction permit to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a driver license or permit if the person's legal presence status is restored.

H. On request of an applicant, the department shall allow the applicant to provide on the license or permit a post office box address that is regularly used by the applicant.

I. The department may request an applicant who appears in person for a license, a duplicate license or reinstatement of a driving privilege to complete satisfactorily the vision screening prescribed by the department.

J. If a driver license applicant submits satisfactory proof to the department that the applicant is a veteran, on request of the applicant, the department shall allow a distinguishing mark to appear on the license that identifies the person as a veteran.

A.R.S. § 28-3160. Applications of minors; liability

A. Except as provided in section 28-3161, the following person or persons shall sign and verify before a person authorized to administer oaths the application of a person under eighteen years of age for an instruction permit, a class G or M driver license or an endorsement to a class G or M driver license:

1. If both the father and mother of the applicant are living, have custody of the applicant and are married to each other, either the father or the mother of the applicant.
2. If both the father and mother of the applicant are living, have custody of the applicant and are not married to each other, both the father and mother of the applicant.
3. If one parent of the applicant has custody of the applicant, the parent who has custody.
4. If neither parent of the applicant is living, the person or guardian who has custody of the applicant or an employer of the applicant.
5. If the applicant resides with a foster parent, the foster parent.
6. If there is no guardian or employer of the applicant, a responsible person who is willing to assume the obligation imposed by this chapter on a person who signs the application of a minor.

B. Negligence or wilful misconduct of a minor when driving a motor vehicle on a highway is imputed to the person who signs the application of the minor for a permit or license. Except as otherwise provided in subsection D of this section, the person who signs the application is jointly and severally liable with the minor for damage caused by the negligence or wilful misconduct.

C. Notwithstanding section 25-214, subsection C, a spouse who signs the application pursuant to subsection A of this section binds the marital community.

D. The parents or guardian of a minor are not liable under subsection B of this section during the time proof of financial responsibility is maintained by the minor or on behalf of the minor in the form and in amounts required by law for the operation of a motor vehicle the minor owns, or if the minor is not the owner of a motor vehicle, for the operation of any motor vehicle.

A.R.S. § 28-3165. Nonoperating identification license; immunity; rules; emancipated minors; definition

A. On receipt of an application from a person who does not have a valid driver license issued by this state or whose driving privilege is suspended, the department shall issue a nonoperating identification license that contains a distinguishing number assigned to the licensee, the full legal name, the date of birth, the residence address and a brief description of the licensee and either a facsimile of the signature of the licensee or a space on which the licensee is required to write the licensee's usual signature with pen and ink. A nonoperating identification license that is issued to a person whose driving privilege is suspended shall not be valid for more than one hundred eighty days from the date of issuance.

B. On request of an applicant:

1. The department shall allow the applicant to provide on the nonoperating identification license a post office box address that is regularly used by the applicant.
2. If the applicant submits satisfactory proof to the department that the applicant is a veteran, the department shall allow a distinguishing mark to appear on the nonoperating identification license that identifies that person as a veteran.

C. A person who is issued a license pursuant to this section shall use it only for identification purposes of the licensee. The nonoperating identification license does not grant authority to operate a motor vehicle in this state. The department shall clearly label the nonoperating identification license "for identification only, not for operation of a motor vehicle".

D. On issuance of a driver license, the holder of a nonoperating identification license shall surrender the nonoperating identification license to the department and the department shall not refund any fee paid for the issuance of the nonoperating identification license.

E. A nonoperating identification license shall contain the photograph of the licensee. The department shall use a process in the issuance of nonoperating identification licenses that prohibits as nearly as possible the ability to superimpose a photograph on the license without ready detection. The department shall process nonoperating identification licenses and photo attachments in color.

F. On application, an applicant shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and residence address, if the applicant has a residence address, and that the applicant's presence in the United States is authorized under federal law. The application shall briefly describe the applicant, state whether the applicant has been licensed, and if so, the type of license issued, when and by what state or country and whether any such license is under suspension, revocation or cancellation. The application shall contain other identifying information required by the department.

G. The department may adopt and implement procedures to deny a nonoperating identification license to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a nonoperating identification license if the person's legal presence status is restored.

H. A nonoperating identification license issued by the department is solely for the use and convenience of the applicant for identification purposes.

I. The department shall adopt rules and establish fees for issuance of a nonoperating identification license, except that the department shall not require an examination.

J. The fees established pursuant to this section do not apply to any of the following:

1. A person who is sixty-five years of age or older.
2. A person who is a recipient of public monies as an individual with a disability under title XVI of the social security act, as amended.
3. A veteran who does not have a residence address.
4. A veteran whose residence address is the address of a shelter that provides services to the homeless.
5. A child in the custody of the department of child safety.

K. If a person qualifies for a nonoperating identification license and is under the legal drinking age, the department shall issue a license that is marked by color, code or design to immediately distinguish it from a nonoperating identification license issued to a person of legal drinking age. The department shall indicate on the nonoperating identification license issued pursuant to this subsection the year in which the person will attain the legal drinking age.

L. If a minor has been emancipated pursuant to title 12, chapter 15, on application and proof of emancipation, the department shall issue a nonoperating identification license that contains the words "emancipated minor".

M. Notwithstanding any other law, if an applicant for a nonoperating identification license is at least sixteen years of age and either does not have a residence address or is in the department of child safety's custody, the applicant does not need a signature of the applicant's parent, guardian, foster parent or employer.

N. For the purposes of this section, "veteran" has the same meaning prescribed in section 41-601.

A.R.S. § 28-3170. Duplicate permit or license

A. If an instruction permit or driver license issued under this chapter is lost, destroyed or made illegible, if the name or address of the applicant changes or if a new photo image is desired, the person to whom the permit or license was issued may obtain a duplicate, update or substitute of the permit or license, on payment of the fee required by section 28-3002.

B. If a person holds a driver license and wants a distinguishing mark on the license that identifies the person as a veteran, the person may obtain an update or substitute of the license after both of the following:

1. Submitting satisfactory proof to the department that the applicant is a veteran.
2. Paying the fee required by section 28-3002, subsection A, paragraph 7.

A.R.S. § 28-3175. Driver licenses; nonoperating identification licenses; use for boarding aircraft; accessing restricted areas; rules

A. Notwithstanding any other law, on or before April 1, 2016, if a driver license applicant or nonoperating identification license applicant requests a driver license or nonoperating identification license that allows the applicant to board a federally regulated commercial aircraft or to access restricted areas in federal facilities, nuclear power plants or military facilities, the department must issue the applicant the driver license or nonoperating identification license.

B. A driver license or nonoperating identification license issued pursuant to this section:

1. Shall be valid for a period not to exceed eight years.
2. May not contain radio frequency identification technology.

C. The department shall adopt rules to implement this section.

A.R.S. § 28-3227. Commercial drivers; convictions; notification requirements; violation

A. A driver of a commercial motor vehicle who has a driver license issued by this state and who is convicted of violating a state law or local ordinance relating to motor vehicle traffic in any state or a federal, provincial, territorial or municipal law of another country, other than a parking violation, shall notify the department within thirty days of the date of the conviction in the manner prescribed by the department.

B. A driver of a commercial motor vehicle who has a driver license issued by this state and who is convicted of violating a state law or local ordinance relating to motor vehicle traffic in any state or a federal, provincial, territorial or municipal law of another country, other than a parking violation, shall notify the person's employer in writing of the conviction within ten days of the date of conviction.

C. A driver whose driver license is suspended, revoked or canceled by a state, who loses the privilege to drive a commercial motor vehicle in a state for any period of time or who is disqualified from driving a commercial motor vehicle for any period of time shall notify the person's employer of the action before the end of the business day following the day the driver receives notice of the action.

D. A person who applies for employment as a driver of a commercial motor vehicle shall provide the person's employer, at the time of application, with the following information for the ten years preceding the date of application:

1. A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle.
2. The dates the applicant was employed by each employer.
3. The reason for leaving each employment.

E. The applicant shall certify that all information furnished pursuant to subsection D of this section is true and complete. An employer may require an applicant to provide additional information.

F. A driver of a commercial motor vehicle who provides false or fraudulent information to an employer or who fails to report the information required in subsection A, B, C or D of this section is guilty as provided in section 28-3481.

A.R.S. § 28-3306. Discretionary license suspension or revocation; traffic survival school; hearing

A. The department may suspend or revoke the license of a driver or require a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers on a showing by department records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of the license is required on conviction.
2. Has been involved as a driver in an accident resulting in the death or personal injury of another or serious property damage.
3. Has been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with such a frequency that it indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.
4. Has been convicted of reckless driving as provided in section 28-693 or is a habitually reckless or negligent driver of a motor vehicle.
5. Is medically, psychologically or physically incapable of operating a motor vehicle and, based on law enforcement, medical or other department information, the continued operation of a motor vehicle by the licensee would endanger the public health, safety and welfare.
6. Has committed or permitted an act involving an unlawful or fraudulent use of the license.
7. Has committed an offense in another jurisdiction that if committed in this state is grounds for suspension or revocation.
8. Has been convicted of a violation of section 28-1381 or 28-1382.
9. Has been convicted of a violation of section 28-1464.

B. On receipt of satisfactory evidence of a violation of a driver license restriction, the department may suspend or revoke the driver license.

C. On suspending or revoking the license of a person or requiring a licensee to attend and successfully complete approved traffic survival school educational sessions designed to improve the safety and habits of drivers pursuant to this section, the department shall notify the licensee in writing immediately.

D. On the receipt of the person's request for a hearing, the department shall set the hearing within sixty days. The department may hold the hearing in person, by telephone or by videoconference. If the department holds the hearing in person, the department shall hold the hearing in the county where the licensee resides unless the law enforcement agency issuing the citation or affidavit that authorizes the suspension or revocation requests at the time of issuance that the hearing be held in the county where the violation allegedly occurred.

E. If a hearing is held, the department or its duly authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee.

F. At the hearing, the department shall either rescind its order of suspension or its order requiring the licensee to attend and successfully complete approved traffic survival school educational sessions or, if good cause exists, the department may uphold or extend the order, revoke the license or make any order that is within its discretionary power under this section and that is in the interest of public safety.

G. If a licensee receives notice requiring the licensee to attend and successfully complete approved traffic survival school educational sessions and the department receives information of noncompliance with this order, the department shall amend the order to suspend or revoke the license.

H. A person whose driver license is suspended or revoked as provided in subsection A, paragraph 5 of this section may submit a written request to the department for an administrative hearing. The person shall submit the request for a hearing within fifteen days after the department provides the person with notice of suspension or revocation. On receipt of a proper request for a hearing, the department shall provide the person with an opportunity for a hearing in the county where the person resides within thirty days after the department receives the request. The request for a hearing does not stay a summary suspension issued by the department.

I. The department shall remove a suspension from a record if the person has completed all requirements imposed under this title or by a court in this state, including the successful completion of traffic survival school educational sessions, except for payment of reinstatement fees as prescribed by section 28-3002. The person shall pay the appropriate reinstatement fees that are required under section 28-3002 when conducting a transaction with the department.

A.R.S. § 28-3312. Mandatory disqualification of commercial driver licenses; definition

A. The department shall disqualify a person who is required to have a commercial driver license, who is a commercial driver license holder or who is a commercial learner's permit holder from driving a commercial motor vehicle as follows:

1. Except as provided in subsection E of this section and except as otherwise provided in this subsection, for at least one year if a person:
   (a) Refuses a test in violation of section 28-1321.
   (b) Is convicted of a first violation of any of the following:
      (i) Driving a commercial motor vehicle under the influence of intoxicating liquor or a controlled substance or while having an alcohol concentration of 0.04 or more.
      (ii) Leaving the scene of an accident involving a motor vehicle driven by the person.
      (iii) Using a motor vehicle in the commission of a felony.
      (iv) A violation of chapter 4, article 3 of this title while operating a noncommercial motor vehicle.
      (v) Driving a commercial motor vehicle while, as a result of prior violations of this title committed while operating a commercial motor vehicle, the person's commercial driver license is revoked, suspended or canceled or the person is disqualified from operating a commercial motor vehicle.
      (vi) Causing a fatality through the negligent operation of a commercial motor vehicle, including a conviction of manslaughter, homicide or negligent homicide resulting from operation of a motor vehicle.
2. For at least three years, if the person is convicted of any of the violations prescribed in paragraph 1 of this subsection and the violation occurred while the person was transporting a hazardous material in the quantity and under the circumstances that require placarding of the transport vehicle under the department's safety rules pursuant to chapter 14 of this title.

3. For the life of the person, if the person is convicted of two or more violations of any of the offenses prescribed in paragraph 1 of this subsection or of any combination of those offenses arising from two or more separate incidents. The department shall consider only offenses committed from and after December 31, 1989 in applying this paragraph.
4. Permanently if the person is convicted of using any motor vehicle in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance.
5. For at least sixty consecutive days, if the person is convicted of two serious traffic violations committed in a motor vehicle arising from separate incidents occurring within a three-year period from the date of the violation.
6. For at least one hundred twenty days served in addition to any other disqualification, if the person is convicted of a third or subsequent serious traffic violation committed in a motor vehicle arising from separate incidents occurring within a three-year period from the date of the violation.
7. For at least sixty consecutive days, if the department determines that the person falsified information or documentation as part of the licensing process.
8. For at least one year, if the person is convicted of fraud related to the issuance of a commercial learner's permit or commercial driver license.
9. Permanently if the person is convicted of any of the following offenses or an offense committed in another jurisdiction that if committed in this state would be a violation of any of the following offenses and a commercial motor vehicle was used in the commission of the offense:
   (a) Sex trafficking pursuant to section 13-1307.
   (b) Trafficking of persons for forced labor or services pursuant to section 13-1308.
   (c) Child sex trafficking pursuant to section 13-3212.

B. Except as provided in subsection C of this section, a person who is required to have a commercial driver license or a commercial driver license holder and who is found responsible for violating an out-of-service order pursuant to section 28-5241 is disqualified from driving a commercial motor vehicle as follows:
1. For a period of one hundred eighty days if the person is found responsible for a first violation of an out-of-service order.
2. For a period of two years if the person is found responsible for a second violation of any out-of-service order during any ten-year period arising from separate incidents.
3. For a period of three years if the person is found responsible for a third or subsequent violation of any out-of-service order during any ten-year period arising from separate incidents.

C. A person who is required to have a commercial driver license or a commercial driver license holder and who is found responsible for violating an out-of-service order pursuant to section 28-5241 while transporting hazardous materials or while operating a commercial motor vehicle designed or used to transport sixteen or more passengers, including the driver, is disqualified from driving a commercial motor vehicle as follows:

1. For a period of one hundred eighty days if the person is found responsible for a first violation of an out-of-service order.
2. For a period of three years if the person is found responsible for a second or subsequent violation of any out-of-service order during any ten-year period arising from separate incidents.

D. A person who is required to have a commercial driver license or a commercial driver license holder and who is convicted of or found responsible for violating any federal, state or local railroad grade crossing law, ordinance or regulation is disqualified from driving a commercial motor vehicle as follows:
1. For a period of sixty days if a person is convicted of or found responsible for a first violation.
2. For a period of one hundred twenty days if a person is convicted of or found responsible for a second violation during any three-year period.
3. For a period of one year if a person is convicted of or found responsible for a third or subsequent violation during any three-year period.

E. If a federal agency determines that a commercial motor vehicle licensee is driving in a manner that constitutes an imminent hazard, the department, on receipt of notification by the federal government, shall disqualify the driver for a period not to exceed one year. The disqualification shall run concurrently with any other disqualification imposed on the driver. For the purposes of this subsection, "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding to decrease the risk of death, illness, injury or endangerment.

F. The department shall keep records of findings of responsibility for a civil traffic violation and of conviction of any moving criminal traffic violation for a commercial driver licensee for violations in any type of motor vehicle and for a person required to have a commercial driver license if the violations arise from the operation of a commercial motor vehicle. The department shall make the records available to other states, the United States secretary of transportation, the driver and any motor carrier or prospective motor carrier or the motor carrier's designated agent within ten days after receiving a report of a conviction or finding of responsibility in this state or receipt of a report of a conviction or finding of responsibility or disqualification received from another state.

G. Disqualification for a serious traffic violation committed by a commercial driver license holder while operating a noncommercial motor vehicle applies only if the conviction results in the revocation, cancellation or suspension of the person's commercial driver license or noncommercial driver license.

H. The department may adopt rules establishing guidelines and conditions under which the department may reduce a disqualification for life pursuant to subsection A, paragraph 3 of this section to a disqualification of at least ten years. If a person's disqualification is reduced pursuant to rules adopted pursuant to this subsection and the person is subsequently convicted of a violation described in subsection A, paragraph 1 of this section, the person is permanently disqualified from driving a commercial vehicle and is not eligible to apply for a reduction of the disqualification pursuant to rules adopted pursuant to this subsection.

I. Except as provided in subsection E of this section, the beginning date of the disqualification shall be ten days after the date the department receives the report of conviction or finding of responsibility.

J. For the purposes of this section, "serious traffic violation" means a conviction or finding of responsibility for any of the following:

1. Excessive speeding involving a single offense for a speed of fifteen miles per hour or more above the posted speed limit.
2. Reckless driving as provided by section 28-693.
3. Aggressive driving as provided by section 28-695.
4. Racing as defined in section 28-708.
5. Improper or erratic traffic lane changes as provided by section 28-729.
6. Following the vehicle ahead too closely as provided by section 28-730.
7. A violation of this title that is connected with a fatal traffic accident.
8. Driving a commercial motor vehicle if the person has not been issued a valid commercial driver license pursuant to this chapter.
9. Driving a commercial motor vehicle without a commercial driver license in the person's possession.
10. Driving a commercial motor vehicle without having a valid endorsement for the type of commercial motor vehicle or motor vehicle combination being operated.
11. Driving a commercial motor vehicle while using a portable wireless communication device as provided by section 28-914.

A.R.S. § 28-4144. Notice; suspension; reinstatement fees

A. If the owner's response to a mailing pursuant to section 28-4143 indicates that the motor vehicle does not meet the financial responsibility requirement of section 28-4135 or section 28-4033, subsection A, paragraph 2, subdivision (c), the department shall send a suspension notice to the owner that states:

1. The motor vehicle does not meet the financial responsibility requirements.
2. The owner's driver license and motor vehicle registration will be suspended fifteen days after the date the suspension notice is mailed and, if the owner is required to comply with section 28-4033, subsection A, paragraph 2, subdivision (c), that all motor vehicles that are registered to the owner and that do not meet the financial responsibility requirements will be suspended fifteen days after the date the notice is mailed unless either:
   (a) The owner produces additional evidence to the department on or before the effective date of the suspension that the financial responsibility requirement of section 28-4135 or section 28-4033, subsection A, paragraph 2, subdivision (c) was met for the vehicle on the date of the accident.
   (b) The owner requests a hearing.

B. If a response is not received within thirty days after the date the original notice requiring proof of financial responsibility is mailed, the department shall:

1. Send a suspension notice to the owner that the owner's driver license and motor vehicle registration or registration privilege will be suspended fifteen days after the date the suspension notice is mailed and, if the

owner is required to comply with section 28-4033, subsection A, paragraph 2, subdivision (c), that all motor vehicles that are registered to the owner and that do not meet the financial responsibility requirements will be suspended fifteen days after the date the notice is mailed unless the owner submits evidence of financial responsibility or proof that the vehicle was sold pursuant to section 28-4143 before the effective date of the suspension.

2. If a response or evidence of financial responsibility or proof of vehicle sale pursuant to section 28-4143 is not received within the required time, suspend the motor vehicle registration or registration privilege, license plate and driver license.
3. If there is no other basis for the suspension and evidence of financial responsibility or evidence of vehicle sale is later submitted, verify the evidence of financial responsibility or sale pursuant to section 28-4143 and remove the suspension from the public record if financial responsibility is proven.

C. Except as provided in subsection B of this section, if the motor vehicle registration, registration privilege, license plate or driver license is suspended pursuant to section 28-4143 or this section:
1. The suspension is for a minimum of one year.
2. The department shall not terminate the suspension until the applicant both:
   (a) Files with the department proof of financial responsibility in accordance with article 3 of this chapter.
   (b) Pays to the department a ten dollar fee for the reinstatement of the driver license and a twenty-five dollar fee for the reinstatement of the motor vehicle registration and license plate, except that these fees do not apply to a suspension removed pursuant to subsection B of this section or to a suspension applicable to a person who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter unless the person was required to comply with the financial responsibility requirements prescribed in section 28-4033, subsection A, paragraph 2, subdivision (c).

Other Applicable Rules

R2-12-605. Transfer of Electronic Voter Registration Information

A. The Secretary of State, or its duly authorized third party, shall receive an electronic voter registration information from an accepted transmitter and deliver it to a destination county recorder.

B. A county recorder may:

1. Receive electronic voter registration information updates through the Secretary of State;
2. Receive paper renditions of the electronic voter registration information on a registration form prescribed by the Secretary of State;
3. Receive digitized images of the electronic voter registration information in a registration form prescribed by the Secretary of State.

C. Information collected to update a registrant's voter registration information may be transmitted electronically if the following conditions are true:

1. A registrant provides information to a transmitter for updating the registrant's name or address in the identification register pursuant to A.R.S. § 16-112(B)(4).
2. The information specified in subsection (C)(1) is received from a transmitter specified in R2-12-604(A).
3. The information specified in subsection (C)(1) is transmitted in an electronic voter registration format via an electronic manner accepted by the Secretary of State.
4. The information specified in subsection (C)(1) uniquely identifies an elector of a county recorder's voter registration roll by name and date of birth.

D. Information collected for the intent of initial registration to the voter registration rolls may be transmitted electronically if:

1. The information meets the criteria of subsection (C);
2. The information contains a digitized image of a registrant's wet signature; and
3. The information has been electronically signed by a registrant to authorize the transmitter to release the electronic voter registration form.

E. Voter registration information shall be kept confidential pursuant to A.R.S. § 16-153.

F. Driver's license information shall be kept confidential pursuant to A.R.S. § 16-112.

Federal Regulations and Code Citations

6 CFR 37 - Real ID Driver's Licenses and Identification Cards

49 CFR 384.206 - State record checks

49 CFR 384.210 - Limitation on licensing

49 CFR 384.225 - CDLIS driver recordkeeping

49 CFR 384.231 - Satisfaction of State disqualification requirement

49 CFR 384.232 - Required timing of record checks

49 CFR 391.15 - Disqualification of drivers

49 U.S.C. Chapter 313 - Commercial Motor Vehicle Operators

DEPARTMENT OF PUBLIC SAFETY
Title 13, Chapter 7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF PUBLIC SAFETY**
Title 13, Chapter 7

Summary

This Five-Year Review Report (5YRR) from the Department of Public Safety (Department) relates to three (3) rules in Title 13, Chapter 7 regarding Reporting By Scrap Metal and Used Automotive Components Dealers. Specifically, the rules specify the manner in which various scrap metal dealers are to submit electronic records of scrap metal and lead-acid battery transactions into the Department's scrap metal and lead-acid battery database. The Department provides a functioning website through vendor LeadsOnline, based on these rules for the regulated community to upload data and for enforcement agencies to have access to the data.

In the prior 5YRR for these rules, which was approved by the Council in December 2018, the Department had no recommended changes to the rules.

Proposed Action

In the current report, the Department has no proposed amendments to the rules and recommends carrying them forward as-is.

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 objective of the rules is to specify the way various scrap metal dealers are to submit electronic records of scrap metal and lead-acid battery transactions into the Department's scrap metal and lead-acid battery database. The cost of the rules is directly associated with the state-contracted vendor, LeadsOnline. LeadsOnline provides the maintenance of the website and database. The $43,300 annual recurring maintenance fee is covered in full by the Department. Currently, there are 421 companies registered. The Department believes the benefits outweigh the costs. The economic environment has not changed since 2013 when the rules were promulgated.

Stakeholders are identified as the Department, LeadsOnline, registered businesses, law enforcement 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 a minimal burden and cost to those regulated.

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

The Department indicates it received no written criticisms of the rules in the last five years.

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

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

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?

The Department 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?

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

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

Not applicable. The Department indicates the rules do not require the issuance of a regulatory permit, license or agency authorization.

11. Conclusion

This 5YRR from the Department relates to three (3) rules in Title 13, Chapter 7 regarding Reporting By Scrap Metal and Used Automotive Components Dealers. Specifically, the rules specify the manner in which various scrap metal dealers are to submit electronic records of scrap metal and lead-acid battery transactions into the Department's scrap metal and lead-acid battery database. The Department indicates the rules are effective, consistent, clear, concise, understandable, and enforced as written. As such, the Department does not propose to make any changes to the rules.

Council staff recommends approval of this report.

March 8, 2023

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Public Safety 13 A.A.C. 7 *Reporting by Scrap Metal and Used Automotive Component Dealers* Five-Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report by the Department of Public Safety for 13 A.A.C. 7, *Reporting by Scrap Metal and Used Automotive Component Dealers* which is due by September 2023.

Pursuant to: 13 A.A.C 1, Section 301:

The Department does not intend for any rules to expire under A.R.S. § 41-1056(J).

There are no previously rescheduled rules by the Council under A.R.S §. 41-1056(H).

The Department hereby certifies compliance with A.R.S. § 41-1091 as there are no substantive policy statements for these rules.

For questions about this report, please contact Mr. Paul Swietek, Research and Planning Unit at 602-223-2049 or pswietek@azdps.gov.

Sincerely,

Colonel Jeffrey Glover
Director

Arizona Department of Public Safety
Five-year Review Report
13 A.A.C. 7, Reporting By Scrap Metal and Used Automotive Components Dealers
May 10, 2023

A. List any rule you intend to expire on the date the five-year review is due under A.R.S. § 41-1056(J) and R1-6-301. An explanation of why the rule is intended to expire is required. Once a rule has expired, only a formal rulemaking process can reestablish it.

The Department does not intend for any rules to expire.

B. Provide a certification the rules are in compliance with A.R.S. § 41-1091 on substantive policy statements.

The Department has no substantive policy statements for these rules.

Complete the following for each rule, table and exhibit pursuant to A.R.S. § 41-1056 and R1-6-301:

1. Authorization of the rule by general and specific statutes:

A.R.S. § 41-1713(A)(4). General authority to make rules necessary for the operation of the Department.

A.R.S. §§ 44-1327(B) and 44-1644(C). Specific authority to establish electronic submission standards.

2. The objective of the rule including the purpose of the existence of the rule:

Rule	Objective
101	To define words that are used in the rules.
102	To specify the manner in which various scrap metal dealers are to submit electronic records of scrap metal transactions into the Department's scrap metal and lead-acid battery database.
103	To specify the manner in which various scrap metal dealers are to submit electronic records of lead-acid battery transactions into the Department's scrap metal and lead-acid battery database.

3. Are the rules effective in achieving their objectives?

The rules are effective in setting electronic submission standards.

Rule	Explanation
N/A	

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

   The rules are consistent with the authorizing statutes. There are no other rules that are relevant. The Department is not anticipating any future statutory changes.

Rule	Statute	Explanation
N/A		

5. Are the rules enforced as written and are there any problems enforcing the rules?

   Yes. The rules set forth the electronic submission guidelines for the website vendor LeadsOnline and the regulated community. The Department provides a functioning website based on these rules for the regulated community to submit their data to the database.

   The Department does not have statutory authority to enforce the content of the data or compliance by the regulated community. The statutory authority for the enforcement and compliance is designated to local law enforcement agencies; such as, municipal police and county sheriff.

   The Department is only statutorily required to provide the website functionality to register, upload data and for enforcement agencies to have access to the data.

Rule	Explanation
N/A	

6. Are the rules clear, concise and understandable?

   Yes. The Department believes the rules are concisely written and understandable to the regulated community. The referenced requirements are easy to locate and easily understood and conform to grammar standards. The Department has not received any criticisms regarding the rules for this item in the thirteen years the rules have been in place.

Rule	Explanation
N/A	

7. Has the agency received written criticisms of the rules within the last five years?

   No.

Rule	Criticism	Action
N/A		

8. Economic, small business and consumer impact comparison:

   The economic environment has not changed since the 2018 report and has not changed since 2013 when the rules were promulgated. Refer to Item #11 for more details.

9. Has the agency received any business competitiveness analysis of the rules?

   No.

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

    The Department had no recommended changes from the 2018 report; therefore, there was no course of action.

Rule	Action Needed	Action Taken
N/A		

11. A determination 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 rules including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

    The cost of the rules is directly associated with the state-contracted vendor, LeadsOnline. LeadsOnline provides the maintenance of the website and database. The $43,300 annual recurring maintenance fee is covered in full by the Department.

    The regulated community and law enforcement agencies are not charged any fees; for example, there are no fees to register, upload data or to have access to the data.

    The registration process is simple and straight forward and requires very little effort via the website. This registration houses the names and locations of the registered users as well as the transactions they conduct. The names and locations of the registered businesses are also available to the general public.

    The authorizing statutes require the Department to provide for a system that is compatible with the output format of not less than four of the record keeping software programs currently in use by the regulated community. The Department accounts for this in the rules by providing a list of file types that cannot be electronically imported and parsed into the system by the nature of the file type; typically, pictures-based or non-parsing text-based files. Outside of that list, the Department and LeadsOnline, have since the inception of the rules, made the necessary adjustments to the system to accept from the regulated community any other file types that support individual or batch data reports that can be parsed electronically.

    Currently, there are 421 companies registered. The Department has received no complaints; which would indicate the system is working as required.

    The Department believes the benefits outweigh the costs. The benefit of uploading transaction data for law enforcement investigative purposes is to curb theft of the regulated items. These measures to curb theft may have a positive impact on the public at-large to prevent or reduce the costly replacement of the regulated items and prevent their vehicles

from being rendered unusable permanently or for a period of time. Those benefits outweigh the minimal financial cost to operate the website and the minimal data entry time required by the regulated community; for example, where data has the option to be automatically uploaded by batch overnight.

12. Are the rules more stringent than corresponding federal laws?

    Not applicable as there is no corresponding federal law.

13. For rules adopted or amended 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 and exception applies:

    Not applicable as the rules do not require the issuance of a regulatory permit, license or agency authorization.

    The website registration process is merely a free user account to gain access to the database; which the user completes themselves online with no regulatory oversight from the Department. Website registration can be accomplished for an individual or a company at their discretion.

14. Proposed course of action:

    The Department has no proposed amendments and recommends carrying the rules forward as-is; therefore, there is no future course of action.

TITLE 13. PUBLIC SAFETY

CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY
REPORTING BY SCRAP METAL AND USED AUTOMOTIVE COMPONENTS DEALERS

ARTICLE 1. REPORTING BY SCRAP METAL AND USED AUTOMOTIVE COMPONENTS DEALERS

Article 1, consisting of Section R13-7-101 through R13-7-103, made by final rulemaking at 19 A.A.R. 1796, effective September 7, 2013 (Supp. 13-3).

ARTICLE 1. REPORTING BY SCRAP METAL AND USED AUTOMOTIVE COMPONENTS DEALERS

R13-7-101. Definitions

In addition to the definitions provided under A.R.S. §§ 44-1321 and 44-1641 and for the purposes of this Article, the following definitions apply:

1. "Department" means the Arizona Department of Public Safety.
2. "Scrap Metal and Lead Acid Battery Database" means the Internet-based database supported by the Department for the collection of data regarding the sale and purchase of scrap metal and lead acid batteries.

Historical Note

New Section R13-7-101 made by final rulemaking at 19 A.A.R. 1796, effective September 7, 2013 (Supp. 13-3).

R13-7-102. Electronic Standards for Reporting Receipt of Scrap Metal

A. A scrap metal dealer required to submit an electronic record under subsection § 44-1644(A) shall submit the record into the Scrap Metal and Lead Acid Battery Database. To submit the record, the scrap metal dealer shall create an electronic account in the Scrap Metal and Lead Acid Battery Database. The scrap metal dealer may:

1. Manually submit each record directly into the Scrap Metal and Lead Acid Battery Database, or
2. Upload individual or batch records from a point-of-sale software program or other software program into the Scrap Metal and Lead Acid Battery Database.

B. A scrap metal dealer choosing to upload records under subsection (A)(2) shall conform to the following electronic submission standards:

1. Have available and use Internet connectivity for submission to the Scrap Metal and Lead Acid Battery Database;
2. Ensure when uploading an individual or batch record that:
   a. The record is not any of the following electronic formats:
      i. Joint Photographic Experts Group (JPEG), Tagged Image File Format (TIFF), Graphics Interchange Format (GIF), Portable Network Graphics (PNG), or any other picture format;
      ii. Portable Document Format (PDF); or
      iii. Word processing program format; and
   b. The record submitted is in a format that enables the Scrap Metal and Lead Acid Battery Database to perform data parsing and configuration necessary to merge the record with the Scrap Metal and Lead Acid Battery Database.

C. A scrap metal dealer choosing to upload records under subsection (A)(2) shall ensure that the Department has current specifications regarding the format in which the records are submitted so the Department can make changes necessary to merge the records with the Scrap Metal and Lead Acid Battery Database.

Historical Note

New Section R13-7-102 made by final rulemaking at 19 A.A.R. 1796, effective September 7, 2013 (Supp. 13-3).

R13-7-103. Electronic Standards for Reporting Receipt of Lead Acid Batteries

A. A used automotive components dealer required to submit an electronic record under subsection § 44-1327(A) shall submit the record into the Scrap Metal and Lead Acid Battery Database. To submit the record, the used automotive components dealer shall create an electronic account in the Scrap Metal and Lead Acid Battery Database. The used automotive components dealer may:

1. Manually submit each record directly into the Scrap Metal and Lead Acid Battery Database, or
2. Upload individual or batch records from a point-of-sale software program or other software program into the Scrap Metal and Lead Acid Battery Database.

B. When submitting a record into the Scrap Metal and Lead Acid Battery Database, a used automotive components dealer shall indicate that the record is about receipt of lead acid batteries.

C. A used automotive components dealer choosing to upload records under subsection (A)(2) shall conform to the following electronic submission standards:

1. Have available and use Internet connectivity for submission to the Scrap Metal and Lead Acid Battery Database;
2. Ensure when uploading an individual or batch record that:
   a. The record is not any of the following electronic formats:
      i. Joint Photographic Experts Group (JPEG), Tagged Image File Format (TIFF), Graphics Interchange Format (GIF), Portable Network Graphics (PNG), or any other picture format;
      ii. Portable Document Format (PDF); or
      iii. Word processing program format; and
   b. The record submitted is in a format that enables the Scrap Metal and Lead Acid Battery Database to perform data parsing and configuration necessary to merge the record with the Scrap Metal and Lead Acid Battery Database.
3. A used automotive components dealer choosing to upload records under subsection (A)(2) shall ensure that the Department has current specifications regarding the format in which the records are submitted so the Department can make changes necessary to merge the records with the Scrap Metal and Lead Acid Battery Database.

Historical Note

New Section R13-7-103 made by final rulemaking at 19 A.A.R. 1796, effective September 7, 2013 (Supp. 13-3).

41-1713. Powers and duties of director; authentication of records

A. The director of the department shall:

1. Be the administrative head of the department.

2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.

3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.

4. Make rules necessary for the operation of the department.

5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.

6. Appoint a deputy director with the approval of the governor.

7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.

8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.

9. 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.

10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.

11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.

12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

B. The director may:

1. Issue commissions to officers of the department.

2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.

4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.

5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.

6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.

8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.

9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.

10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.

11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.

12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

44-1327. Report to the department of public safety; exemption; violation; classification

A. Within twenty-four hours of receipt of lead acid batteries, except from an industrial account or a used automotive components dealer, for which a record is required to be kept by section 44-1325, a used automotive components dealer shall electronically submit to the department of public safety a record of the receipt of lead acid batteries. The record shall include the following information:

1. The date, time and place of the transaction.

2. An identifying description of the specific lead acid batteries received including the amount of the transaction or other consideration given.

3. A description of the person delivering the lead acid batteries to the used automotive components dealer including the person's gender, height, weight, race and hair and eye color, address and date of birth and a photocopy of a current driver license, nonoperating identification license issued pursuant to section 28-3165 or photo identification card issued by a tribal government or the United States military.

4. The number and state of issuance of the license on the vehicle used to deliver the lead acid batteries.

B. The department of public safety shall establish by rule electronic submission standards. The submission standards shall allow the submission of the information in an electronic format that is compatible with the output format of not less than four of the record keeping software programs currently in use in the used automotive components dealer industry in this state in a manner that will allow the information to be electronically merged with the department of public safety's database. A used automotive components dealer that submits information to the department of public safety pursuant to this section shall not be required to submit the same information to a local law enforcement agency.

C. The department of public safety shall make the information submitted pursuant to this section available to local law enforcement agencies over the internet and shall provide for training and procedures to allow law enforcement personnel to access the information provided electronically for law enforcement purposes.

D. For transactions with a value over one hundred dollars, a used automotive components dealer shall hold in its custody in the same size, shape and condition in which the lead acid battery was received on its business premises any lead acid batteries received in a reportable transaction for seven days after filing the report prescribed by subsection A of this section.

E. Subsection D of this section does not apply to transactions with industrial accounts or lead acid batteries authorized for release by a peace officer of that jurisdiction.

F. A person who fails to file a report prescribed by this section is guilty of a class 1 misdemeanor.

44-1644. Report; exemption; violation; classification

A. Within twenty-four hours after receiving scrap metals, except from an industrial account or a scrap metal dealer, for which a record is required to be kept by section 44-1642, a scrap metal dealer shall electronically submit to the department a record of the receipt of the scrap metals. The record shall include the following information:

1. The date, time and place of the receipt of the scrap metal.

2. An identifying description of the specific scrap metal received, including:

(a) The weight and amount of the transaction or other consideration given.

(b) Unique identifying numbers and markings on catalytic converters as defined in section 44-1642.01, subsection A, paragraph 8 or any nonferrous parts of a catalytic converter.

3. A description of the person delivering the metal to the scrap metal dealer including the person's gender, height, weight, race and hair and eye color, address and date of birth and a photocopy of a current driver license, nonoperating identification license issued pursuant to section 28-3165 or photo identification card issued by a tribal government or the United States military.

4. The number and state of issuance of the license on the vehicle used to deliver the scrap metal.

B. A scrap metal dealer shall electronically submit to the department a record of the receipt of each purchase of a used catalytic converter as defined in section 44-1642.01, subsection A, paragraph 8 or any nonferrous parts of a catalytic converter from an industrial account or another scrap metal dealer. The report shall include:

1. The name, address and transaction privilege tax number of the seller.

2. The date, time and place of the transaction.

3. The number of catalytic converters purchased.

4. Any unique identifying numbers and markings on catalytic converters or any nonferrous parts of a catalytic converter.

C. The department shall establish by rule electronic submission standards. The submission standards shall allow the submission of the information in an electronic format that is compatible with the output format of not less than four of the record keeping software programs currently in use in the scrap metal industry in this state in a manner that will allow the information to be electronically merged with the department's database. A scrap metal dealer that submits information to the department pursuant to this section is not required to submit the same information to a local law enforcement agency.

D. The department shall make the information submitted pursuant to this section available to local law enforcement agencies over the internet and shall provide for training and procedures to allow law enforcement personnel to access the information provided electronically for law enforcement purposes.

E. For copper, aluminum wire with a diameter of at least three-eighths of an inch and transactions with a value over $100, a scrap metal dealer shall hold in its custody in the same size, shape and condition in which the scrap metal was received on its business premises any scrap metal received in a reportable transaction for seven days after filing the report prescribed by subsection A of this section.

F. Subsection E of this section does not apply to transactions with industrial accounts, other scrap metal dealers or purchases by scrap metal dealers of used aluminum beverage containers or ferrous metals and of scrap metal authorized for release by a peace officer of that jurisdiction.

G. A person who fails to file a report prescribed by this section is guilty of a class 1 misdemeanor.

DEPARTMENT OF ADMINISTRATION
Title 2, Chapter 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 6, 2023

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

FROM: Council Staff

DATE: August 17, 2023

SUBJECT: **DEPARTMENT OF ADMINISTRATION**
Title 2, Chapter 11

Summary

This Five-Year Review Report (5YRR) from the General Services Division of the Arizona Department of Administration (Division) relates to thirty-seven (37) rules in Title 2, Chapter 11, Articles 1-5 regarding Public Buildings Maintenance. Those articles relate to the following:

- Article 1 - General
- Article 2 - Traffic and Parking
- Article 3 - Solicitation and Special Event
- Article 4 - Severability
- Article 5 - Governmental Mall Development

In the previous 5YRR for these rules, which was approved by the Council in January 2019, the Division proposed the following changes to the rules:

- The Division intended to review and amend Article 3 and repeal Article 4 (Special Events) and consolidate both articles into one to improve clarification and understanding for the public. Specifically, the Division indicated both articles are almost identical, but cause confusion for the public in understanding the application process for either a

solicitation or special event on state property. The Division amended the rules in Article 3 and repealed rules in Article 4 by rulemaking that was effective October 13, 2019.

- The Division intended to review and amend R2-11-107 to include Fire Life Safety Systems. The Division indicates it did not complete this prior proposed course of action as the Division underwent some very labor intensive projects and staff reassignments that precluded the Division from completing the prior proposed course of action. The Division states projects that largely impacted the division include, but are not limited to, the Statewide COVID Pandemic response, the Division AD's temporary reassignment to the School Facility Board, staff resignations, and the Governor's Inauguration Ceremony.

Proposed Action

In the current report, the Division is proposing to amend rules R2-11-201 through 209 related to general provisions regarding responsibility of those parking on state property, those who have parking permits, and what the Department is not responsible for, and amend the rules relating to fines and the removal of vehicles on state property including the current penalty structure for violators. Additionally, the Division wishes to amend rule R2-11-107 to include Fire Life Safety Systems. The Division indicates it intends to submit a Notice of Docket Opening to the Secretary of State in June 2024.

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

The Division cites both general and specific statutory authority for these rules.

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

The Department believes that the economic impact of the rules has not differed significantly from that projected in the original economic impact statement submitted in the final rulemaking and made effective on August 8, 2003. The Department states that Article 2 rules will have a negative impact on small businesses that use the state parking facilities, if the use is inappropriate. Stakeholders include the Department and persons or entities visiting or utilizing state property.

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

The Department believes that the rules impose the least burden and costs to individuals, public and private entities regulated by these rules. The Department has made every effort to ensure the procedures outlined for individuals regulated by the rules are efficient, cost effective, and necessary to achieving the regulatory objectives.

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

The Division indicates it received no written criticisms of the rules in the last five years.

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

The Division indicates the rules are clear, concise, and understandable.

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

The Division indicates the rules are consistent with other rules and statutes.

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

The Division indicates the rules are effective in achieving their objectives.

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

The Division 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?

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

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

Not applicable. The Division indicates the rules were adopted prior to July 29, 2010.

11. Conclusion

This 5YRR from the Division relates to thirty-seven (37) rules in Title 2, Chapter 11, Articles 1-5 regarding Public Buildings Maintenance. The Division indicates the rules are effective, consistent, clear, concise, understandable, and enforced as written. Nevertheless, the Division indicates it intends to amend rules R2-11-201 through 209 related to general provisions regarding responsibility of those parking on state property, those who have parking permits, and what the Department is not responsible for, and amend the rules relating to fines and the removal of vehicles on state property including the current penalty structure for violators. Additionally, the Division wishes to amend rule R2-11-107 to include Fire Life Safety Systems. The Division indicates it intends to submit a Notice of Docket Opening to the Secretary of State in June 2024.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Elizabeth
Alvarado-Thorson
Director

ARIZONA DEPARTMENT OF ADMINISTRATION
GENERAL SERVICES DIVISION
1400 WEST WASHINGTON STREET • SUITE B200
PHOENIX, ARIZONA 85007
(602) 542-1796

August 17, 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 Department of Administration; Five-year Review Report
Arizona Administrative Code (A.A.C.) Title 2, Chapter 11, Department of Administration
Public Building Maintenance

Dear Ms. Sornsin,
In compliance with A.R.S. § 41-1056, the Arizona Department of Administration, General Services Division submits a report of its five-year review of Title 2, Chapter 11 of the Arizona Administrative Code. I certify the Department is in compliance with A.R.S. § 41-1091.

If you have any questions regarding this five year review report or need additional information, please contact Jobalena Yates, General Services Division, by phone at 602-721-9640 or by email at Jobalena.Yates@azdoa,gov.

Sincerely,

Nola Barnes
Assistant Director, ADOA, GSD

cc: Elizabeth Alvarado Thorson, Director
Sean Price, Deputy Director

Governor's Regulatory Review Council

Five-Year-Review Report

1. Authorization of the rule by existing statutes

General Statutory Authority:

Specific Statutory Authority: A.R.S. §§ 41-703, 41-791(0), and 41-796(A)

2. The objective of each rule:

Rule	Objective
R2-l l-101. Definitions	Is to help state employees and the public understand the terminology that is used throughout this Article.
R2-ll-102. Alcoholic Beverages	Is to ban alcohol on state property. The rule is necessary to protect the health and safety of state employees and the public.
R2-ll-103. Altering Buildings or Grounds	is to prevent a person from altering, remodeling, or redecorating state property without prior approval from the Director. The rule is necessary to.protect state property and the safety of state employees and the public.
R2-ll-104. Animals	is to prevent animals on state property with the exception of an animal guide or service animal without prior approval from the Director. The rule is necessary to protect the safety of state employees and the public.
R2-ll-105. Bicycles, Rollerblades, Roller skates, and Skateboards	is to prevent the use of bicycles, rollerblades, rollerskates, and skateboards on state property unless that person is an on-duty police officer ori bicycle patrol or a state employee using a bicycle for transportation to and from work. The rule is necessary for the safety of state employees and the public.
R2-ll-106. Electrical or Plumbing Systems	is to prevent a person from installing or modifying an electrical or plumbing system on state property without prior approval from the Director. The rule is necessary to prohibit unauthorized work on electrical or plumbing syste s on state property that could affect the health and safety of state employees and the public.
R2-ll-107. Heating or Cooling Equipment	is to prevent a person from tampering with or adjusting heating and cooling equipment or controls on state property without prior approval from the Director. The rule is necessary to prohibit unauthorized work on cooling and heating equipment on state property that could affect the health and safety of state employees and the public.

R2-11-108. Noise	is to prevent a person from creating loud noises on state property that interferes with the work of an employee or daily business of an agency. The rule is necessary to prevent workplace disruptions to state employees.
R2-11-109. Plants	is to prevent a person from picking, cutting, or removing flowers, shrubs, trees, or other parts of plants from state property without prior approval from the Director.
R2-11-110. Roofs	is to prevent a person from being on the roof of a state building without prior approval from the Director. The rule is necessary for the health and safety of state employees and the public.
R2-11-111. Signs	is to prevent a person from installing a sign of any type on state property without prior approval from the Director. The rule is necessary to prohibit altering of state property with unauthorized signs and protects the health and safety of state employees and the public.
R2-11-112. Smoking	Notice of Rule Expiration sent to SOS - Expired 7/13/17
R2-11-113. Waste	is to prevent littering, dumping of residential or commercial materials and to prevent waste disposal that could potentially affect the health and safety of state employees and the public. The rule is necessary for the health and safety of state employees and the public.
R2-11-114. Windows	is to prevent the waste of finite resources by requiring prior approval from the Director before a person is allowed to open a window in a state building.
R2-11-201. Definitions	Is to help state employees and the public understand the terminology that is used throughout this Article.
R2-11-202. General Provisions	is to provide general provisions regarding responsibility of those parking on state property, those who have parking permits and what the Department is not responsible for.
R2-11-203. Parking Prohibitions	is to outline specific parking prohibitions on or around state property. The rule is necessary to maintain safe traffic and parking conditions on state property for state employees and the public.
R2-11-204. Parking Decals	is to state the requirements and criteria for using parking decals. The rule is necessary so that a state employee understands how to properly place their parking permit so that it is visible.

R2-11-205. Operation of Vehicles on State Property	is to authorize the Department to enforce all state laws governing the operation of vehicles. The rule is necessary to provide safe traffic and parking conditions for state employees and the public.
R2-11-206. Penalties	Notice of Rule Expiration sent to SOS - Expired 7/13/17
R2-11-207. Hearings	Notice of Rule Expiration sent to SOS -Expired 7/13/17
R2-11-208. Rehearing	Notice of Rule Expiration sent to SOS - Expired 7/13/17
R2-11-209. Removal of Vehicles from State Property	is to authorize the Department to remove any vehicle on state property that is parked in a prohibitive manner under the provisions of this Article and requires the registered owner of the vehicle to pay all costs for removal. The rule is necessary to maintain safe traffic and parking conditions on state property for state employees and the public.
R2-11-301. Definitions	is to define the terms and phrases used in Article 3. The rule is necessary for clarity and understanding of the rules.
R2-11-302. Unauthorized Solicitation Prohibited	is to prevent a solicitation or special event on state property without express written permission from the Director.
R2-11-303. Application	outlines the application requirements to conduct a solicitation or special event on state property.
R2-11-304. Processing Procedure	is to explain the processing procedure for applications of solicitations or special events.
R2-11-305. Permit Issuance; Denial	is to explain the permit issuance and denial process for applications of solicitations or special events.
R2-11-306. Bulletin Boards	is to authorize the Director to designate one bulletin board in every state building where the solicitor shall post solicitation or special event material.
R2-11-307. State Resources	is to prevent a person from using state materials, supplies, equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation or special event.
R2-11-308. Work Sites	is to prevent a person from conducting a solicitation at a worksite except for posting material on a bulletin board designated by the Director.
R2-11-309. Exemptions	is to exempt certain state programs from the solicitation or special event requirements.

R2-11-310. Suspension or Revocation	is to authorize the Director to suspend or revoke a permit for failure to comply with this Article.
R2-11-3ll. Review of Denial or Summary Suspension	is to explain the process that a solicitor may obtain a hearing on a denial or summary suspension of a permit and outlines the timelines for both the Department and the applicant on process.
R2-11-312. Definitions	is to set forth requirements by the Director for the sponsor to abide by all conditions set forth by the Director in ensuring the public health and safety at an event.
R2-11-401. Validity of Rules	is to ensure that if a rule or portion of a rule in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules. The rule is necessary so that in the event a section is held invalid, the rest of the rules remain whole and unaffected.
R2-11-501 Review of Denial or Summary Suspension	is to explain the process that an applicant may obtain a hearing on a denial or summary suspension of a Governmental Mall Development request and outlines the timelines for both the Department and the applicant on process.

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 ru/e(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:

Commenter	Comment	Agency's Response

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

The information provided with the previous five-year-review report approved by Council in November 2018 indicated that the economic impact of the rules had not differed significantly from that projected in the economic impact statement submitted in the final rulemaking and made effective on August 8, 2003. Article 2 rules could have an impact on public and private individuals or small businesses that use the state parking facilities, if the use

is inappropriate. Articles 3 can impact small businesses looking to conduct a solicitation or special event on state property. Impacts can occur regarding the special events rules in cases where special events are cancelled due to increased costs for insurance coverage required by the Director. However, the rules on special events can have a favorable impact on small businesses as well, specifically insurance agents who provide coverage for such events.

The administrative costs for compliance of these rules are minimal to the Department. There are no viable alternative methods of compliance that would apply to small business.

The Department did not see any impacts as a result of the 2003 economic impact statement and its estimations as noted nor received comments on the EIS. In addition, there are no changes from the previous economic impact statements provided to Council.

As a result of legislative changes, the former Capitol Police who enforced the Article 2 rules previously was transitioned into DPS. The Department believes what was reported in the 2003 EIS remains the same. Article 2 rules will have a negative impact on the small businesses that use the state parking facilities, if the use is inappropriate. The Department may collect or subcontract the collection duties to a collection agency, and that would have a positive impact on the collection agency's revenues. There is no practical method to reduce the impact on small businesses that use the state parking in the conduct of business, without diluting the corrective effects sought in the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes** **No_X_**

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

The Department **did** complete the course of action indicated in the previous five-year review report for the following:

Improvement Via Amendment
Article 3. Solicitation. Regulates the use of state property for solicitation of material. R2-1 l-301 through R2-1 l-3 l l.
Article 4. Special Events. Regulates the use of state property for special events. R2-1 l-40I through R2-1 l-409.
The Department wishes to review and amend Article 3 under J ofEO2017-02 in addition repeal Article 4. Special Events and consolidate both articles into one to improve clarification and understanding for the public.

Specifically, both articles are almost identical, however, cause confusion for the public in understanding the application process for either a solicitation or special event on state property.

The rules have been amended with a Final Rule Making effective date of October 13, 2019.

The Department **did not** complete the course of action indicated in the previous five-year review report for the following:

Improvement Via Amendment R2-11-107

The Department wishes to review and amend R2-11-107 to include Fire Life Safety Systems.

The division underwent some very labor intensive projects and staff reassignments that precluded the Division from completing the proposed rule course of action. Projects that largely impacted the division include but are not limited to the Statewide COVID Pandemic response, GSD AD's temporary reassignment to the School Facility Board, staff resignations, and the Governor's Inauguration Ceremony.

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

The Department believes that the rules impose the least burden and costs to individuals, public and private entities regulated by these rules. The Department has made every effort to ensure the procedures outlined for individuals regulated by the rules are efficient, cost effective, and necessary to achieving the regulatory objectives.

12. Are the rules more stringent than corresponding federal laws? **Yes** **No_X_**

Federal law does not apply to these rules.

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

The Department indicates that the rules are not applicable to the requirements imposed by A.R.S. § 41-1037 as the rules were adopted prior to July 29, 2010.

14. Proposed course of action

The Department intends to take the following course of action:

Improvement Via Amendment

Article 2 Traffic and Parking - provides general provisions regarding responsibility of those parking on state property, those who have parking permits and what the Department is not responsible for.

R2-11-201 through R2-11-209

The Department wishes to review and amend the rules relating to fines and the removal of vehicles on state property including the current penalty structure for violators.

The Department will submit a docket opening to the Secretary of State in June 2024.

Improvement Via Amendment

R2-11-107

The Department wishes to review and amend R2-11-107 to include Fire Life Safety Systems.

The Department will submit a docket opening to the Secretary of State in June 2024.

Arizona Administrative CODE

2 A.A.C. 11 Supp. 20-2

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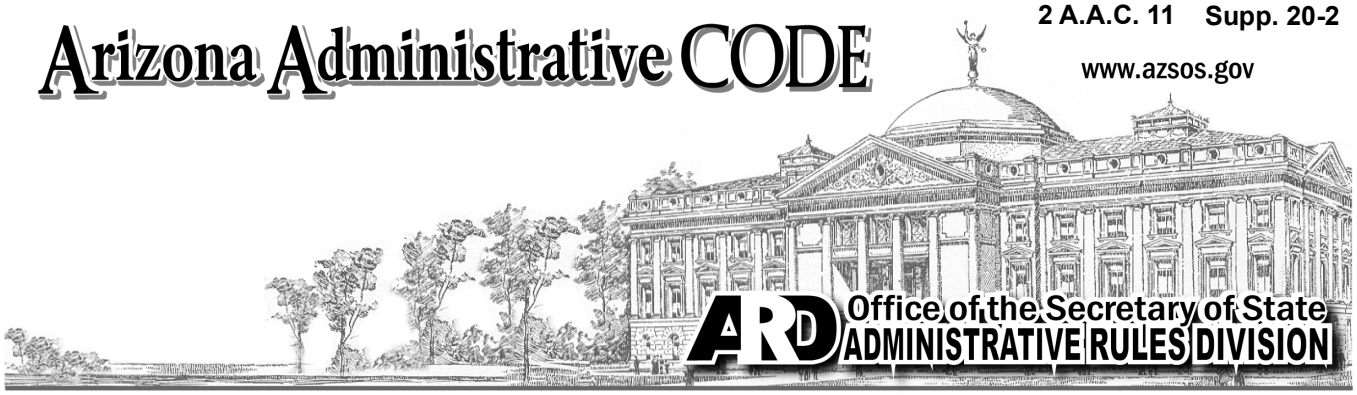

TITLE 2. ADMINISTRATION

CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

The table of contents on the first page contains quick 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*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2020 through June 30, 2020.

Questions about these rules? Contact:

Name: Nola Barnes

Address: Department of Administration
1110 W. Washington, Suite 155
Phoenix, AZ 85007

Telephone: (602) 542-1954

Web site: www.gsd.az.gov

The release of this Chapter in Supp. 20-2 replaces Supp. 19-3, 1-8 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

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. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

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HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State's website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
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TITLE 2. ADMINISTRATION

CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

Editor's Note: 2 A.A.C. 11 made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003. Under A.R.S. § 41-1026(E) these rules repeal and replace the emergency rules made at 9 A.A.R. 3046 (Supp. 03-3).

Editor's Note: 2 A.A.C. 11 made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). The public buildings maintenance rules were previously in 2 A.A.C. 6, which expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 1. GENERAL

ARTICLE 2. TRAFFIC AND PARKING

ARTICLE 3. SOLICITATION AND SPECIAL EVENT

ARTICLE 4. SEVERABILITY

Article 4, consisting of Sections R2-11-401 through R2-11-409 repealed; new Article 4 renumbered from Article 5, new Section R2-11-401 renumbered from R2-11-501, by final rulemaking at 25 A.A.R. 2211 (Supp. 19-3).

ARTICLE 5. GOVERNMENTAL MALL DEVELOPMENT

New Article 5, consisting of Section R2-11-501, made by final rulemaking at 26 A.A.R. 679, effective June 5, 2020 (Supp. 20-2).

Article 5, consisting of Section R2-11-501, renumbered to Article 4, R2-11-401 by final rulemaking at 25 A.A.R. 2211 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

ARTICLE 1. GENERAL

R2-11-101. Definitions

The following definitions apply in this Chapter:

1. "Agency" has the meaning in A.R.S. § 41-1001.
2. "Department" means the Department of Administration.
3. "Director" means the Director of the Department of Administration or the Director's designated agent.
4. "Person" has the meaning in A.R.S. § 1-215 but includes an agency, unless the agency is listed in A.R.S. § 41-791(B)(3).
5. "State building" means a building under the jurisdiction of the Director.
6. "State property" means all real property and buildings under the jurisdiction of the Department, as prescribed by A.R.S. § 41-791.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-102. Alcoholic Beverages

A person shall not possess or consume alcoholic beverages on state property.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-103. Altering Buildings or Grounds

A person shall not alter, remodel, or redecorate state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-104. Animals

A person shall not bring an animal, other than an animal guide or service animal, onto state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-105. Bicycles, Rollerblades, Rollerskates, and Skateboards

A person shall not use or operate bicycles, rollerblades, rollerskates, or skateboards on state property, unless that person is an on-duty police officer on bicycle patrol or a state employee using a bicycle for transportation to and from work.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-106. Electrical or Plumbing Systems

A person shall not install or modify an electrical or plumbing system on state property, or any part of such a system, without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-107. Heating or Cooling Equipment

A person shall not tamper with or adjust heating or cooling equipment or controls on state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-108. Noise

A person shall not create loud noises on state property that interfere with the work of an employee or daily business of an agency.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-109. Plants

A person shall not pick, cut, or remove flowers, shrubs, trees, or other plants or parts of plants from state property without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-110. Roofs

A person shall not be on the roof of a state building without prior approval from the Director.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-111. Signs

A person shall not install a sign of any type on state property without prior approval from the Director.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-112. Expired

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

R2-11-113. Waste

A. A person shall not leave garbage, litter, trash, human or animal waste, or any other kind of waste on state property unless the waste is deposited in a container the Department maintains for that kind of waste.

B. A person shall not deposit waste collected from a private residence or commercial business on state property.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-114. Windows

A person shall not open windows in air-conditioned state buildings without prior approval from the Director.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 2. TRAFFIC AND PARKING

R2-11-201. Definitions

The following definitions apply in this Article:

1. "Citation" means a document, issued by the Department's Capitol Police under A.R.S. § 41-796, that contains a notice to appear.
2. "Decal" means a graphic designed label, placard, sticker, or tag that, when properly displayed, authorizes preferential parking privileges in state parking lots for the driver of a vehicle.
3. "Designate" means to identify with signs or markings.
4. "Employee" means any person elected, appointed, or employed by the state, either on a part-time or full-time basis, whether paid by payroll or under contract or serving as a volunteer.
5. "Loading zone" means an area that is painted yellow, designating a place for business pickups and deliveries.
6. "No-parking zone" means an area that is painted red, designating a place where parking is not permitted.
7. "Parking" means stopping or placing a vehicle in an area, regardless of whether the vehicle is attended or unattended.
8. "Parking space" means an area that the Department outlines with painted white lines, designating a place for parking a vehicle.
9. "Reserved parking space" means any parking space designated for a special purpose or a special class, such as physically disabled persons, travel reduction program participants, or visitors.
10. "Safety zone" means an area or space that is both:
    a. Officially set apart within a roadway for the exclusive use of pedestrians; and
    b. Protected, marked, or indicated by adequate signs as to be plainly visible at all times.
11. "Vehicle" has the meaning in A.R.S. § 28-101 and includes a "motor vehicle," a term also defined in A.R.S. § 28-101.
12. "Visitor" means any person other than an employee.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-202. General Provisions

A. The state is not responsible for the care and protection of any vehicle or its contents at any time the vehicle is operated or parked on state property.

B. The person to whom a parking permit is issued is responsible for all parking violations involving the person's vehicle.

C. If parking lot or area reservation hours are altered, the Department shall post notices at the parking lot or area, and the changes are effective immediately.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-203. Parking Prohibitions

A. A person shall not park a vehicle in a:
1. Bicycle rack or area;
2. Loading zone, unless the person is making a pickup or delivery and the person's vehicle has commercial license plates or is state owned. Loading zone parking is permitted during the time the person is actually engaged in loading or unloading;
3. Location that is not designated as a parking space;
4. No parking zone;
5. Reserved parking space without authorization, unless the person is a visitor using parking reserved for visitors; or
6. Safety zone.

B. A person shall not obstruct any of the following with a vehicle:
1. Building entrance,
2. Driveway,
3. Fire lane,
4. Loading dock, or
5. Properly parked vehicle.

C. A person shall not drive or park a vehicle:

1. On a pedestrian path or sidewalk; or
2. In any area on state property closed by barricades, chain, tape, rope, traffic cones, or other traffic-control devices.

D. A person shall not park outside of the area designated by painted white lines when using a parking space.

E. In an emergency the Department may impose parking limitations or prohibitions required by the particular circumstances.

F. For special events the Department may impose parking limitations or prohibitions based on all of the following factors:
1. Previous experience with similar events, and
2. Risk data.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-204. Parking Decals

A. Unless a person is a visitor using parking reserved for visitors, the person shall properly display a reserved parking space decal in the manner prescribed in this Section to be authorized to park in a reserved parking space.

B. To park in a parking space reserved for the physically disabled, a person shall obtain a removable windshield placard or special plates, bearing the international symbol of access, from the Department of Transportation, Motor Vehicle Division, and display the placard or plates as prescribed by rules of the Department of Transportation.

C. A person with a decal for any other kind of reserved parking space shall display the decal from the rearview mirror, attach the decal to the left side of the windshield, or display the decal on the left side of the dashboard. The person shall ensure that the decal is visible through the windshield so it can be read by someone standing outside the vehicle.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-205. Operation of Vehicles on State Property

A. On state property the Department shall enforce all state laws governing the operation of vehicles.

B. A person driving or parking a vehicle on state property shall obey posted traffic and parking signs.

C. The Department's Capitol Police shall enforce a maximum speed limit of 5 miles per hour in all state parking lots under the Department's jurisdiction.

D. Any person who has been in an accident involving a moving vehicle on state property shall immediately report the accident to the Department's Capitol Police.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-206. Expired

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

R2-11-207. Expired

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

R2-11-208. Expired

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

R2-11-209. Removal of Vehicles from State Property

The Department shall remove any vehicle on state property parked in a barricaded area, abandoned, or parked in a manner that constitutes a hazard or impediment to vehicular or pedestrian traffic or to the movement and operation of emergency equipment. The registered owner of the vehicle shall pay for all costs of removal.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

ARTICLE 3. SOLICITATION AND SPECIAL EVENT

R2-11-301. Definitions

The following definitions apply in this Article:

1. "Department" means the Arizona Department of Administration.
2. "Director" means the Director of the Arizona Department of Administration or the Director's designee.
3. "Solicitation" means any activity for the promotion, sale, advocacy or transfer of product or products, service or services, membership or memberships, or cause or causes. In addition, distribution or posting of advertisements, circulars, flyers, handbills, leaflets, posters, or other printed information for these purposes is solicitation.
4. "Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
5. "Solicitor" means a person conducting a solicitation activity.

6. "Special Event" or "Event" means an assembly, gathering, ceremony, press conference, demonstration, display, festival, parade, or rally conducted by a person excluding a ceremony, gathering, or press conference that is conducted by a person authorized by the head of a state agency using the agency's own office space.
7. "Sponsor" means the person holding an event.
8. "Work site" means any location within a state building where public employees or officers conduct the daily business of an agency including building lobby areas, cafeterias, break rooms, and areas outside of any main entrance.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-302. Unauthorized Solicitation or Event Prohibited
A person shall not conduct a solicitation on state property or use state buildings or grounds for an event without express written permission from the Director.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-303. Application
A. Any person who would like to conduct a solicitation or hold an event on state property may apply for a permit by filing, in person or by mail, a Department-approved application form with the Office of Special Events.
B. The completed application form shall be submitted at least 15 business days before the desired date of the solicitation or event. A completed application form is one that is legible and contains, at a minimum, all of the following information:
1. The name, address, and telephone number of the solicitor or sponsor;
2. The proposed date of the solicitation or event and the approximate starting and concluding times;
3. The specific, proposed location for the solicitation or event;
4. A general description of the solicitation or event, including equipment and facilities to be used;
5. Approximate number of persons expected to be in attendance.
6. The name, address, and telephone number of the person responsible for clean-up of the area after the activity, if different from the person in subsection (B)(1);
7. Copies of all solicitation materials to be used. All materials must provide accurate information;
8. The name, address, and telephone number of any chief monitor who will be designated to direct the solicitation or event;
9. A Certificate of Insurance as required by the Department's Risk Management Division; and
10. Any use of devices that create amplified noise must be included in the permit request.

C. The Director may accept a completed application form submitted less than 15 days before a press conference if the Director determines that enforcing the 15-day requirement would nullify the need for the press conference. In this situation, R2-11-304 does not apply.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-304. Processing Procedure
A. Within three days of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-303.
E. The Director shall render a permit decision no later than three days after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
1. Administrative completeness review time-frame: three days.
2. Substantive review time-frame: three days.
3. Overall time-frame: six days.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-305. Permit Issuance; Denial
A. Before issuing a permit, the Director shall review the application.
B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has complied with the application requirements in R2-11-303.
C. The Director may deny a permit for one or more of the following reasons:
1. The solicitation or event interferes with the work of an employee or daily business of an agency;
2. The solicitation or event conflicts with the time, place, manner, or duration of other events or solicitations for which permits have been issued or are pending;
3. The solicitation or event creates a risk of injury or illness to persons or risk of danger to property; or
4. The applicant, solicitation, or event fails to comply with the requirements of this Article.

D. A permit shall not be issued earlier than one year before the solicitation.

E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules,
2. The applicant's right to seek a hearing to challenge the denial,
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06, and
4. The time periods for appealing the denial.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-306. Bulletin Boards

A. The Director shall designate at least one bulletin board for solicitation or event material in each state building.

B. A person conducting a solicitation or event shall post solicitation or event material only on bulletin boards designated under subsection (A).

C. All posted material must go through the application process and receive approval of the Office of Special Events prior to posting on bulletin boards.

D. The Department has the authority to remove solicitation or event material that is outdated or improperly posted.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-307. State Resources

A person shall not use state materials, supplies, or equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-308. Work Sites

Except for posting solicitation material on a bulletin board designated under R2-11-306, a person shall not conduct a solicitation at a work site.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

R2-11-309. Exemptions

This Article does not apply to the following state programs:
1. The State Deferred Compensation Program,
2. The State Employees Charitable Campaign,
3. The U.S. Savings Bond Drive,
4. The United Blood Services Blood Drive,
5. The Capitol Rideshare Commuter Club,
6. The Capitol Rideshare Clean Air Campaign,
7. Human Resources Professional Development programs,
8. The Employee Wellness Program,
9. The employee recognition programs of each agency subject to these rules, and
10. Programs as determined by the Director related to professional development or training only when sponsored or requested by the agency head.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 5184, effective December 7, 2004 under A.R.S. § 41-1052(E) (Supp. 04-4). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-310. Suspension or Revocation

A. The Director may suspend or revoke a permit for failure to comply with this Article or other applicable laws.

B. Before the Director suspends or revokes a permit, the Department shall send the solicitor or sponsor written notice, explaining:
1. The reason for suspension or revocation, with citations to supporting statutes or rules,
2. The solicitor or sponsor's right to a hearing before suspension or revocation, and
3. The time and place of the hearing concerning the suspension or revocation.

C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend the permit pending proceedings for revocation or other action, based on circumstances of the emergency.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-311. Review of Denial or Summary Suspension

A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant, solicitor, or sponsor may obtain a hearing on a denial or summary suspension.

B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-305(E).

C. If the Director summarily suspends a permit under R2-11-310(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.

D. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-312. Risk Management

A. The Director may take one or more of the following actions to the extent it is necessary and in the best interests of the state:
1. Impose conditions on the conduct of the event in the permit;
2. Require the applicant to post a deposit against damage and clean-up expense;
3. Require the applicant to carry liability insurance and provide the certificate of insurance; and
4. Require the applicant to provide medical, sanitary, and security services.

B. The Director shall consider all of the following criteria to determine whether one or more of the actions in subsection (A) is necessary and in the best interests of the state:
1. Previous experience with similar events;
2. Deposits required for similar events in Arizona;
3. Risk data; and
4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services.

C. The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.

D. If the Director requires insurance for a solicitation or event, the solicitor or sponsor shall list the state of Arizona and the Department as additional insured entities.

E. The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.

Historical Note
New Section made by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

ARTICLE 4. SEVERABILITY

R2-11-401. Validity of Rules

If a rule or portion of a rule contained in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules.

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section repealed; new Section R2-11-401 renumbered from R2-11-501 by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-402. Repealed

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-403. Repealed

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-404. Repealed

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-405. Repealed

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-406. Repealed

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-407. Repealed

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-408. Repealed

Historical Note
New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency

Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

R2-11-409. Repealed

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Repealed by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3).

ARTICLE 5. GOVERNMENTAL MALL DEVELOPMENT

R2-11-501. Review of Denial or Summary Suspension

A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant, may obtain a hearing on a denial or summary suspension.

B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice of denial.

C. If the Director summarily suspends a development project, the Department shall promptly prepare and serve a notice of hearing under Arizona Administrative Code Title 2, Chapter 19.

D. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). R2-11-501 renumbered to R2-11-401 by final rulemaking at 25 A.A.R. 2211, effective October 13, 2019 (Supp. 19-3). New Section made by final rulemaking at 26 A.A.R. 679, effective June 5, 2020 (Supp. 20-2).

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.

2. Provide assistance to the governor and legislature as requested.

3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.

6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.

8. Accept and disburse grants, gifts, donations, matching monies and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

9. Establish and maintain separate financial accounts as required by federal law or regulations.

10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-791. Powers and duties relating to public buildings maintenance; compensation of personnel

A. The department is responsible for the direction and control of public buildings maintenance as prescribed in this article.

B. The department is responsible for the allocation of space, operation, alteration, renovation and security of the following buildings:

1. The state capitol executive tower of the state capitol building.

2. The state office buildings in Tucson.

3. The state office buildings located at:

(a) 701 East Jefferson street in Phoenix.

(b) 801 East Jefferson street in Phoenix.

(c) 417 West Roosevelt street in Phoenix.

(d) 1030 North 32nd street in Phoenix.

4. All other buildings owned or leased by the state and located near the state capitol building and the state office buildings in Tucson, except for:

(a) Buildings occupied, operated and maintained by the following state agencies:

(i) The department of transportation.

(ii) The Arizona power authority.

(b) The state capitol museum, the legislative services wing, the house of representatives and senate wings of the state capitol building and the building located at 1716 West Adams street in Phoenix.

(c) The department of economic security facilities purchased with federal funding assistance and exclusively and continuously operated and maintained for the department's own occupancy.

(d) The Arizona courts building.

(e) The mining, mineral and natural resources educational museum.

C. The department is responsible for the maintenance of the following buildings and grounds:

1. The entire state capitol building and the grounds adjacent to it.

2. The state office buildings in Tucson and the grounds adjacent to them.

3. Other buildings and grounds owned or leased by the state if the function is not otherwise assigned, except for the interior of the Arizona courts building.

D. The director may establish rules for the operation, maintenance and security of buildings and grounds under the director's jurisdiction.

E. The department shall:

1. Employ engineers and maintenance and operations personnel as required, including a buildings manager for the state office buildings in Tucson.

2. Determine the hours of duty and assignment of personnel.

F. All personnel employed under this article are eligible to receive compensation as determined under section 38-611.

41-796. Regulation of traffic and parking; monetary penalties; hearing; state traffic and parking control fund; definition

A. The department of administration may adopt and administratively enforce rules for the control of vehicles on state property with respect only to the following:

1. Maximum speed of vehicles.

2. Direction of travel.

3. Place, method and time of parking.

4. Nonparking areas.

5. Designation of special parking areas for state employees and the general public.

6. Prohibiting parking in vehicle emissions control areas as defined in section 49-541 of those vehicles which fail to comply with section 49-542.

B. The department shall adopt and administratively enforce rules requiring the designation of preferential parking areas, such as reserved, close-in or covered parking, to state employees with offices in vehicle emissions control areas as defined in section 49-541 who are car pool operators as defined in section 28-4032 or who drive vehicles powered by alternative fuel as defined in section 1-215.

C. The department may prescribe and collect reasonable monetary penalties for violations of the rules adopted pursuant to subsection A of this section.

D. The department shall:

1. Cause signs, markings and notices to be posted on the property for the regulation of vehicles.

2. Maintain parking lots and structures.

E. On the failure of a person who is issued a citation for a violation of a rule adopted pursuant to this section to appear, the administrative law judge may proceed to determine whether a violation has occurred and, if so, the penalty to be imposed.

F. Penalties that are imposed pursuant to this section and that are not paid within the time prescribed by the administrative law judge may be collected by an action filed with the justice court.

G. A state traffic and parking control fund is established consisting of monetary penalties collected pursuant to this section. The department shall administer the fund. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

H. All monetary penalties collected by the department for violations of the rules adopted pursuant to subsection A of this section shall be deposited in the state traffic and parking control fund.

I. Except as provided in section 41-1092.08, subsection H, a person who has received a final administrative ruling concerning a penalty imposed on the person as a result of a violation of a rule adopted pursuant to this section may have that ruling reviewed by the superior court in the county in which the institution involved is located pursuant to title 12, chapter 7, article 6.

J. For the purposes of this section, "state property" means property that is the responsibility of the department under section 41-791 and property that is the responsibility of the speaker of the house of representatives or the president of the senate under section 41-1304.05.

G.

CONSIDERATION AND DISCUSSION OF 2024 COUNCIL CALENDAR

Deadline for Placement on Agenda	Final Materials Submitted to Council
- December 19, 2023 - January 23, 2024 - February 20, 2024 - March 19, 2024 - April 23, 2024 - May 21, 2024 - June 18, 2024 - July 23, 2024 - August 20, 2024 - September 17, 2024 - October 22, 2024 - November 19, 2024 - December 24, 2024	- January 23, 2024 - February 20, 2024 - March 19, 2024 - April 23, 2024 - May 21, 2024 - June 18, 2024 - July 23, 2024 - August 20, 2024 - September 17, 2024 - October 22, 2024 - November 19, 2024 - December 24, 2024 - January 21, 2025

Study Session	Council Meeting
- January 30, 2024 - February 27, 2024 - March 26, 2024 - April 30, 2024 - May 29, 2024 (Wednesday) - June 25, 2024 - July 30, 2024 - August 27, 2024 - September 24, 2024 - October 29, 2024 - November 26, 2024 - December 31, 2024 - January 28, 2025	- February 6, 2024 - March 5, 2024 - April 2, 2024 - May 7, 2024 - June 4, 2024 - July 2, 2024 - August 6, 2024 - September 4, 2024 (Wednesday) - October 1, 2024 - November 5, 2024 - December 3, 2024 - January 7, 2025 - February 4, 2025